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Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

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66 ELIZABETH II, 2017

## Bill 89

### **An Act to enact the Child, Youth and Family Services Act, 2017, to amend and repeal the Child and Family Services Act and to make related amendments to other Acts**

**The Hon. M. Coteau**  
Minister of Children and Youth Services

#### **Government Bill**

1st Reading	December 8, 2016
2nd Reading	March 9, 2017
3rd Reading	
Royal Assent	

*(Reprinted as amended by the Standing Committee on Justice Policy  
and as reported to the Legislative Assembly May 15, 2017)*

*(The provisions in this Bill will be renumbered after 3rd Reading)*





This reprint of the Bill is marked to indicate the changes that were made in Committee.

The changes are indicated by underlines for new text and a ~~strike through~~ for deleted text.

## EXPLANATORY NOTE

The Bill is divided into four Schedules.

Schedule 1 repeals the *Child and Family Services Act* and enacts the *Child, Youth and Family Services Act, 2017* in its place.

Schedule 2 amends the *Child and Family Services Act* while it is still in force, that is, before its repeal by Schedule 1.

Schedule 3 amends the new Act, the *Child, Youth and Family Services Act, 2017*.

Schedule 4 contains related and other amendments to 36 other Acts.

### SCHEDULE 1 CHILD, YOUTH AND FAMILY SERVICES ACT, 2017

The current Act refers throughout to Indian and native children, and gives certain rights of notice and participation to a representative chosen by the child's band or native community. The new Act refers to First Nations, Inuit and Métis children and young persons, and gives rights of notice and participation to a representative chosen by each of the child's or young person's bands and First Nations, Inuit or Métis communities. All references to a child's or young person's bands and First Nations, Inuit or Métis communities in the new Act include any band of which the child or young person is a member, any band with which the child or young person identifies, any First Nations, Inuit or Métis community that is listed in a regulation and of which the child or young person is a member, and any First Nations, Inuit or Métis community that is listed in a regulation and with which the child or young person identifies.

Significant changes are made to terminology. The terms society ward and Crown ward are no longer used. Instead, the new Act refers to children who are in interim society care or extended society care, respectively. The new Act does not refer to children being abandoned or to runaways. And the new Act speaks of bringing children to a place of safety, instead of being apprehended, and of dealing with matters, not dealing with children.

The new *Child, Youth and Family Services Act, 2017* is, like the current *Child and Family Services Act*, divided into Parts. Following is an explanation of each Part and, in particular, how each differs from the current Act.

#### Part I Purpose and Interpretation

The paramount purpose of the Act — to promote the best interests, protection and well-being of children — remains unchanged from the current Act.

The additional purposes of the Act are expanded to include the following:

To recognize that services to children and young persons should be provided in a manner that respects regional differences wherever possible and takes into account,

physical, emotional, spiritual, mental and developmental needs and differences among children and young persons;

a child's or young person's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression; and

a child's or young person's cultural and linguistic needs.

To recognize that ~~wherever possible~~, services to children and young persons and their families should be provided in a manner that builds on the strengths of the families wherever possible.

One of the additional purposes in the current Act is to recognize that services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions, and the concept of the extended family. This is amended to refer to First Nations, Inuit and Métis children and young persons and families and to their cultures, heritages and traditions and is expanded to also recognize connection to their communities.

There is no longer specific reference to a child's or young person's religion in the additional purposes of the Act. However, a child's or young person's creed is listed as one of several factors to be considered throughout the new Act. "Creed" is defined to include religion.

#### Part II Children's and Young Persons' Rights

This consolidates the rights of children and young persons found in section 2 and Parts I and V of the current Act.

~~A new provision is added prohibiting service providers and foster parents from using mechanical restraints on children and young persons except as permitted by Parts VI (Youth Justice) and VII (Extraordinary Measures).~~



New provisions are added as follows: restricting service providers and foster parents from using physical restraint on children and young persons except as authorized by the regulations, and from using mechanical restraints on children and young persons except as permitted by Parts VI (Youth Justice) and VII (Extraordinary Measures) and the regulations. The provision in the current Act prohibiting service providers from detaining a child in locked premises except as authorized under the Youth Justice and Extraordinary Measures parts of that Act is maintained; it now expressly applies to foster parents as well as service providers and in respect of young persons as well as children.

In addition, a new statement of rights of children and young persons is added at the outset of the Part, including their right to express their own views freely and safely, to be engaged through honest and respectful dialogue, to have their views given due weight in accordance with their age and maturity and to be informed, in language suitable to their understanding, of their rights and of the existence and role of, and how to contact, the Provincial Advocate for Children and Youth. The procedures in the current Act for making complaints against service providers regarding alleged violations of the rights of children also applies under the new Act to complaints regarding limitations or conditions imposed on visitors and visits. A child or other person may make a complaint as an individual or as part of a group.

### Part III Funding and Accountability

This Part replaces Part I of the current Act. There are several additions as follows.

The Minister may designate entities as lead agencies, which must perform the functions assigned to the lead agency's category by the regulations. The Minister may issue binding directives to certain service providers and lead agencies. A program supervisor may issue compliance orders to certain service providers and lead agencies for failure to comply with, among other things, the Act, the regulations or the directives.

The functions of children's aid societies are set out in this Part and remain essentially the same. One change is that societies are now responsible for investigating allegations that a child is in need of protection and for protecting children in their care, for all children up to the age of 18; in the current Act, these responsibilities are limited to children younger than 16 and to 16 and 17 year olds who are subject to protection orders.

This Part now includes a requirement that every society enter into an accountability agreement with the Minister as a condition of receiving funding; this is currently a requirement in the regulations under the Act, and is being made a statutory requirement in the new Act.

The Minister may issue binding directives to societies. A Director may issue compliance orders to societies for failure to comply with, among other things, the Act, the regulations, an accountability agreement or the directives.

If a society fails to comply with a compliance order, or if the Minister considers it to be in the public interest, the Minister may make a variety of different orders, including ordering a society to take corrective action, suspending, amending or revoking the society's designation, appointing or replacing members of the society's board of directors, designating or replacing a chair of the board, or appointing a supervisor to operate and manage the society. Unless certain conditions exist, the Minister must notify the society of the intention to make such an order, and the society has a right to make a written response.

This Part sets out rules for two or more societies that are proposing to amalgamate and to continue as one society. The Minister may order that a society amalgamate with one or more other societies, or undertake other types of restructuring, if the Minister considers it to be in the public interest. The Minister must notify the society of the intention to make such an order and the society has a right to make a written response to the directions contained in the order, but not to the requirement to amalgamate. In certain circumstances, the Minister may also appoint a supervisor to implement or facilitate the implementation of such an order. A society that receives notice of a proposed order to amalgamate or otherwise restructure must give a copy of the notice to affected employees and their bargaining agents, and on receipt of a final order to amalgamate or otherwise restructure, the society must give notice of the order to affected employees and their bargaining agents and other persons or entities whose contracts are affected by the order, and must make the order available to the public.

The rules for allowing a program supervisor to enter and inspect certain premises to determine compliance with the Act and the regulations are expanded. This Part now sets out rules for such inspections without and with a warrant.

Provisions governing residential placement advisory committees have been moved from Part II (Voluntary Access to Services) in the current Act to this Part in the new Act with the following changes: the current Act lists persons to be included in the committees, while the new Act provides that the committees may include the listed persons; the new Act requires the committees to report to the Minister on their activities annually and on request; the right to object to a residential placement and to ask the Child and Family Services Review Board to review a committee's decision in respect of a residential placement is no longer limited to children 12 or older.

### Part IV First Nations, Inuit and Métis Child and Family Services

This Part replaces Part X of the current Act.



Under the current Act, the Minister may designate native communities for the purposes of the Act. Under this Part, the Minister may make regulations establishing lists of First Nations, Inuit and Métis communities for the purposes of the Act, with the consent of the community's representatives.

Another change is that, under the current Act, a band or native community may designate a body as an Indian or native child and family service authority. Under this Part, a band or First Nations, Inuit or Métis community may designate a body as a First Nations, Inuit or Métis child and family service authority.

## Part V Child Protection

This Part replaces Part III of the current Act with the following changes.

~~Significant changes are made to terminology. The terms society ward and Crown ward are no longer used. Instead, the new Act refers to children who are in interim society care or extended society care. The new Act also does not refer to children being abandoned or to runaways.~~

~~The age of protection is increased to include 16 and 17 year olds: societies may now apprehend and bring into care children aged 16 and 17. Under the current Act, children may only be apprehended and brought into care until they turn 16 (although children subject to a protection order before they turn 16 may continue to receive protection services until they are 18). As part of this change, the definition of a child being in need of protection in the new Act now specifies that a 16 or 17 year old is in need of protection in circumstances or conditions that may be prescribed by regulation. A new authority to enter into agreements with 16 and 17 year olds in need of protection is included in this Part.~~

The age of protection is increased to include 16 and 17 year olds. Under the new Act, 16 and 17 year olds may be found to be in need of protection and additional circumstances or conditions applicable only to 16 and 17 year olds may be prescribed to make that determination. However, 16 and 17 year olds may not be brought to a place of safety without their consent. Societies are newly authorized to enter into agreements with 16 and 17 year olds in need of protection and to bring applications to court.

~~The matters to be considered in determining the best interests of a child are changed. The current Act includes the child's views and wishes, if they can be reasonably ascertained; the new Act also includes the child's views and wishes, and specifies that they are to be given due weight in accordance with the child's age and maturity. The current Act includes the child's cultural background; the new Act includes the child's cultural and linguistic heritage. The religious faith in which the child is being raised is deleted as a matter to be considered. Added is the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression. The provision in the current Act that the best interests of an Indian or native child (referred to in the new Act as a First Nations, Inuk or Métis child) be determined by taking into consideration the importance of preserving the child's cultural identity is expanded to also require taking into consideration the importance of the child's connection to community.~~

The matters to be considered in determining the best interests of a child are changed. The child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained, and in the case of a First Nations, Inuk or Métis child, the importance of preserving the child's cultural identity and connection to community must be taken into consideration. In addition, any other circumstances that are considered relevant, including a list of 11 circumstances similar to those listed in the current Act, are to be considered. Differences include: the current Act includes the child's cultural background in this list while the new Act includes the child's cultural and linguistic heritage; the current Act includes the religious faith in which the child is being raised while the new Act includes the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression.

The authority for societies to enter into voluntary agreements with persons unable to temporarily care for their children and with young persons is moved from Part II (Voluntary Access to Services) of the current Act to Part V of the new Act. Temporary care agreements may be entered into with respect to children of any age and are no longer restricted to children younger than 16. The authority to enter into special needs agreements is not included in the new Act.

~~Under the current Act, persons older than 18 may receive extended care and maintenance from a society if they were subject to a custody order or Crown wardship order that expired on their turning 18 or marrying, if they were eligible to receive support services as a 16 or 17 year old, whether or not they actually received those services or, in the case of Indian or native persons, if they were cared for under customary care immediately before their 18th birthday. The comparable provision under the new Act is for continued care and support, uses the updated terminology of First Nations, Inuit and Métis people and children who are in extended society care and adds that a person who entered an agreement with the society as a 16 or 17 year old may also receive care and support after the agreement expires. The comparable section under the new Act makes the provision of continued care and support mandatory in the circumstances listed in the current Act, adds an additional circumstance when it is to be provided, i.e., when a person entered into an agreement with the society as a 16 or 17 year old and the agreement expires on the person's 18th birthday, and uses the updated terminology of First Nations, Inuit and Métis people and of children who are in extended society care.~~

Societies are required to make all reasonable efforts to pursue a plan for customary care for a First Nations, Inuk or Métis child if the child is in need of protection, cannot remain in the care of or be returned to the care of the person who had charge of the child immediately before intervention by the society or the person entitled to custody of the child and is a member of



or identifies with a band or a First Nations, Inuit or Métis community. Customary care is defined as the care and supervision of a First Nations, Inuk or Métis child by a person who is not the child's parent, according to the custom of the child's band or First Nations, Inuit or Métis community.

An equivalent to section 86 of the current Act, which prohibits Roman Catholic children from being placed in the care of a Protestant society, institution or family and Protestant children from being placed with a Roman Catholic society, institution or family, is not included in the new Act. Instead, a society is to choose a residential placement that, where possible, respects the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, creed, sex, sexual orientation, gender identity, gender expression and cultural and linguistic heritage. In the case of a First Nations, Inuk or Métis child, priority is to be given to placing the child with a First Nations, Inuit or Métis family, respectively.

The duty that all persons have to report suspicions that a child is in need of protection applies only in respect of children younger than 16. However, a person may make a report in respect of a child who is 16 or 17.

#### Part VI Youth Justice

This Part incorporates Part IV of the current Act with the following changes.

This Part adds that a person in charge of a place of open custody, of secure custody or of temporary detention may authorize certain types of searches in accordance with the regulations, and provides that any contraband found during a search may be seized and disposed of in accordance with the regulations.

This Part also places limits on the use of mechanical restraints in places of secure custody or of secure temporary detention.

#### Part VII Extraordinary Measures

This Part replaces Part VI of the current Act, with the following changes.

A section is added setting out limits on the use of mechanical restraints in secure treatment programs.

The current Act allows children and young persons to be placed in secure isolation rooms; in the new Act, this is changed to allow for placing children and young persons in secure de-escalation rooms.

Under the current Act, service providers are required to comply with standards prescribed by regulation respecting the period of time a young person 16 or older who is in a place of secure custody or secure temporary detention may spend in a secure isolation room and regarding the observation of the young person. In the new Act, the time periods and observation standards for those young persons who are placed in secure de-escalation rooms are set out in the Act itself.

#### Part VIII Adoption and Adoption Licensing

This Part builds on Part VII of the current Act.

~~The provision in the current Act that the best interests of an Indian or native child (referred to in the new Act as a First Nations, Inuk or Métis child) be determined by taking into consideration the importance of preserving the child's cultural identity is expanded to also require taking into consideration the importance of the child's connection to community.~~

The matters to be considered in determining the best interests of a child are changed. The changes are the same as those described above under Part V Child Protection.

A new two stage process is added for a licensee to bring a child who is not a resident of Canada into Ontario to be placed for adoption. First, the licensee must obtain a Director's approval of the person with whom the child is to be placed as eligible and suitable to adopt based on a homestudy. Second, the licensee must obtain a Director's approval of the proposed placement.

The current Act provides an exception to certain requirements if a child is placed for adoption with the child's relative, the child's parent or a spouse of the child's parent. In the new Act, the exception is limited to circumstances in which the child is a resident of Canada and the placement is within Ontario. The current Act also provides an exception to the same requirements if a child is sent out of Ontario for adoption by the child's relative, the child's parent or a spouse of the child's parent. In the new Act, the exception is now limited to circumstances in which the placement is within Canada.

There is a new requirement on societies that begin planning for the adoption of a First Nations, Inuk or Métis child to consider the importance of developing or maintaining the child's connection to the child's bands and First Nations, Inuit or Métis communities.

The ability of a court to make an openness order in respect of a child for the purposes of facilitating communication or maintaining a relationship between the child and certain persons remains. A new type of openness order is added where a society intends to place a First Nations, Inuk or Métis child who is in extended society care for adoption. In such circumstances, the child, the society, or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities may apply for an openness order. The court may make this type of openness order if it is satisfied that the order is in the child's best interests, that the order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community and, if the child is 12 or older, if the child consents.



In the various provisions regarding applications for and proceedings with respect to openness orders, the method of giving notice to a child requires that notice must be given to the Children's Lawyer, the child's lawyer, if any, and the child if the child is 12 or older. The child is entitled to participate in the proceeding as if they were a party.

There is a new requirement on societies to make all reasonable efforts to assist a child to maintain relationships with persons that are beneficial and meaningful to the child where the child was placed for adoption but the society decides not to finalize the adoption or where a child returns to the care of a society after an adoption order was made.

The adoption licensing rules that were in Part IX of the old Act are now in this Part and remain substantially the same.

#### Part IX Residential Licensing

This Part replaces Part IX of the current Act. Current Part IX addresses both residential licensing and adoption licensing. Under the new Act, adoption licensing has been moved into Part VIII.

As under the current Act, a licence is required to operate a children's residence or to provide residential care in specified circumstances. This Part now provides for regulations to prescribe any other residence as a children's residence.

Other additions to this Part include the following. The Minister may issue binding directives to licensees. The Minister may publish certain information with respect to licences and applications for licences. Licences are to be issued or renewed for a specified term. A Director may assign a class to a licence. On issuing or renewing a licence, a Director may include the maximum number of children for whom residential care may be provided by the licensee. A licensee must charge the amount set out in or determined in accordance with the regulations for the provision of residential care, unless the regulations exempt the licensee.

The rules respecting the right to request a hearing by the Licence Appeal Tribunal, and to appeal the Tribunal's findings, remain essentially unchanged.

The powers of a program supervisor to conduct residential licensing inspections under the current Act are replaced by powers of an inspector to conduct such inspections for the purposes of determining compliance with the Act, the regulations and the directives. This Part now sets out rules for such inspections without and with a warrant.

#### Part X Personal Information

This Part replaces the very limited Part VIII in the current Act, and is essentially a new Part. It is modelled on provisions in the *Personal Health Information Protection Act, 2004*.

This Part sets out extensive rules for the following: the collection, use and disclosure of personal information by the Minister and by service providers; the determination of whether an individual has the capacity to give, withhold or withdraw consent to the collection, use or disclosure of their personal information; the authorization of a substitute decision-maker to give, withhold or withdraw consent on behalf of an individual; the maintenance and protection of personal information by service providers; individuals' rights of access to service providers' records containing their personal information and to require service providers to correct that information; individuals' rights to make a complaint to the Information and Privacy Commissioner in respect of any contraventions of this Part; the Information and Privacy Commissioner's powers and duties under this Part.

#### Part XI Miscellaneous Matters

This Part incorporates Part XII of the current Act with the following changes.

New in this Part is the authority of the Lieutenant Governor in Council to require, by regulation, certain persons, including those who provide or receive services under the Act, to provide police record checks to another person or body. ~~Also, a society may ask the police for police record checks or other information prescribed by the regulations for the purposes of performing the society's functions.~~ Also, a society may, in the prescribed circumstances or for a prescribed purpose, ask the police for police record checks or other prescribed information.

~~Under the current Act, the Minister must periodically conduct a review of the Act or those provisions specified by the Minister. The review must include a review of provisions imposing obligations on societies when providing services to a First Nations, Inuk or Métis person. This Part adds that the review must include a review of the additional purpose of the Act related to First Nations, Inuit and Métis peoples, with a view to evaluating the progress that has been made to achieve that purpose.~~

Under the current Act, the Minister must periodically conduct a review of the Act or of those provisions specified by the Minister; the review must include a review of provisions imposing obligations on societies when providing services to an Indian or native person. In Part XI of the new Act, the review must address the following matters: the rights of children and young persons; the provisions imposing obligations on societies when providing services to a First Nations, Inuk or Métis person; and the additional purpose of the Act related to First Nations, Inuit and Métis peoples, with a view to evaluating the progress that has been made to achieve that purpose. It also requires the Minister to consult with children and young persons when conducting a review.



## Part XII Regulations

As in the current Act, the power to make regulations for each Part of the Act is set out in its own section. In addition, section 316 authorizes the Lieutenant Governor in Council and the Minister to make regulations for the purposes of the Act as a whole, including regulations to govern transitional matters that may arise from the enactment of the new Act and the repeal of the current Act.

### SCHEDULE 2 AMENDMENTS TO THE CHILD AND FAMILY SERVICES ACT

This Schedule amends the current *Child and Family Services Act* as follows.

It anticipates the increase in the age of protection from 16 to 18 that is in the new Act in Schedule 1 in the following amendments: clauses 15 (3) (a) and (b) of the Act are re-enacted so that societies' functions to investigate allegations that a child may be in need of protection and to protect children in their care are no longer restricted to children younger than 16 or already subject to a protection order; section 27 of the Act is amended to specify that a service provider requires the consent of children 16 or older before providing them with a residential service and a re-enacted subsection 27 (3) provides that the consent of children 16 or older to the provision of any service is not required when the service is provided under Part III (Child Protection); a court order or the consent of a person who is 16 or older before providing the person with a service; ~~clause 29 (2) (a) of the Act is repealed so that temporary care agreements may~~ subsection 29 (2) of the Act is re-enacted to allow temporary care agreements to be entered into in respect of children who are 16 or older; the definition of "child" in subsection 37 (1) of the Act, which excludes children who are apparently or actually 16 or older for the purposes of Part III (Child Protection), is repealed, so that child in Part III means a person younger than 18; subsection 37 (2) of the Act is amended to provide that regulations may be made setting out additional circumstances or conditions under which a 16 or 17 year old may be found to be in need of protection; ~~subsections 41 (1) and (4) of the Act, which currently permit the apprehension of children actually or apparently younger than 16, are amended to also permit the apprehension of children who are 16 or 17~~ section 40 is amended and new sections 40.1 and 46.1 provide that a society may bring a 16 or 17 year old who is subject to a supervision order to a place of safety only with their consent and the society must, as soon as possible and at the latest within five days of bringing the 16 or 17 year old to a place of safety, bring the matter to court or return the child to the person entitled to custody.

New section 37.1 authorizes 16 and 17 year olds to enter into agreements with societies for the provision of services and supports to them where the society determines that they are or may be in need of protection and is satisfied that no less disruptive course of action is available and the child wants to enter into the agreement.

Section 57 of the Act is amended to provide that a court shall make no order under that section in respect of a child who withdrew from parental control before or after intervention under Part III, where the court is not satisfied that a court order is necessary to protect the child in the future even though the child is found to be in need of protection.

Section 71.1 of the Act is amended to allow a person 18 or older to receive care and maintenance from a society if the person entered into an agreement for services from the society as a 16 or 17 year old and that agreement expired on the person's 18th birthday.

~~The duty of certain professionals in under~~ section 72 to report suspicions that a child is in need of protection is amended to allow, though not require, such reports in respect of children who are 16 or 17.

~~Like the age of protection amendments, all~~ All the amendments discussed above anticipate provisions in the new Act. However, these amendments to the current Act are intended to come into force before the new Act does.

### SCHEDULE 3 AMENDMENTS TO THE CHILD, YOUTH AND FAMILY SERVICES ACT, 2017

This Schedule amends the new *Child, Youth and Family Services Act, 2017* as follows.

Sections 130 and 131 of the Act, which provide for the maintenance of a child abuse register, are repealed. Consequential amendments are made to other sections to delete all references to sections 130 and 131.

Subsection 203 (1) of the Act allows a court to change an adopted person's surname or given name. This is re-enacted to permit the court to change an adopted person's surname, forename, both surname and forename or single name. The court may also change the person's single name to a name with at least one forename and surname or the person's forename and surname to a single name. Single names are to be determined in accordance with the traditional culture of the adopted person or the applicant or applicants.

References to the *Corporations Act* are replaced with references to the as yet unproclaimed *Not-for-Profit Corporations Act, 2010*.



#### SCHEDULE 4 AMENDMENTS TO OTHER ACTS

This Schedule contains amendments to 36 other Acts, most of which are consequential to the repeal of the *Child and Family Services Act* and the enactment of the *Child, Youth and Family Services Act, 2017*. Most of these amendments simply update references to the current Act and to terminology from the current Act to refer to the new Act and the new terminology.

A few Acts are amended more extensively as follows.

The *Intercountry Adoption Act, 1998* is amended to bring that Act into closer alliance with the adoption and adoption licensing requirements of the *Child, Youth and Family Services Act, 2017*. In particular, amendments are made to require police record checks, to give the Director under that Act additional authority to refuse to issue or renew or to revoke a licence to facilitate intercountry adoptions, to clarify the inspection powers with respect to licensees and to amend the penalty provisions.

The *Jewish Family and Child Service of Metropolitan Toronto Act, 1980* is amended to provide that the society established under that Act is deemed to be a children's aid society designated under the *Child, Youth and Family Services Act, 2017* and that it may only exercise its powers to ~~apprehend and detain children~~ bring children to a place of safety within the City of Toronto. The governance provisions in the special Act are repealed, leaving the society subject to the governance provisions in the *Child, Youth and Family Services Act, 2017*.

The *Public Sector Labour Relations Transition Act, 1997* is amended to apply automatically upon the amalgamation of two or more children's aid societies.

The only amendments in this Schedule that are unrelated to the repeal of the *Child and Family Services Act* and the enactment of the *Child, Youth and Family Services Act, 2017* are to the *Freedom of Information and Protection of Privacy Act*. Subsections 65 (8) and 67 (2) of that Act are amended to correct references to other Acts.





**An Act to enact the Child, Youth and Family Services Act, 2017,  
to amend and repeal the Child and Family Services Act  
and to make related amendments to other Acts**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Contents of this Act**

**1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.**

**Commencement**

**2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.**

**(2) The Schedules to this Act come into force as provided in each Schedule.**

**(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.**

**Short title**

**3 The short title of this Act is the *Supporting Children, Youth and Families Act, 2017*.**

**SCHEDULE 1**  
**CHILD, YOUTH AND FAMILY SERVICES ACT, 2017**

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### Preamble

The Government of Ontario acknowledges that children are individuals with rights to be respected and voices to be heard.

The Government of Ontario is committed to the following principles:

Services provided to children and families should be child-centred.

Children and families have better outcomes when services build on their strengths. Prevention services, early intervention services and community support services build on a family's strengths and are invaluable in reducing the need for more disruptive services and interventions.

Services provided to children and families should respect their diversity and the principle of inclusion, consistent with the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.

Systemic racism and the barriers it creates for children and families receiving services must continue to be addressed. All children should have the opportunity to meet their full potential. Awareness of systemic biases and racism and the need to address these barriers should inform the delivery of all services for children and families.

Services to children and families should, wherever possible, help maintain connections to their communities.

In furtherance of these principles, the Government of Ontario acknowledges that the aim of the *Child, Youth and Family Services Act, 2017* is to be consistent with and build upon the principles expressed in the United Nations Convention on the Rights of the Child.

With respect to First Nations, Inuit and Métis children, the Government of Ontario acknowledges the following:

The Province of Ontario has unique and evolving relationships with First Nations, Inuit and Métis peoples.

First Nations, Inuit and Métis peoples are constitutionally recognized peoples in Canada, with their own laws, and distinct cultural, political and historical ties to the Province of Ontario.

Where a First Nations, Inuk or Métis child is otherwise eligible to receive a service under this Act, an inter-jurisdictional or intra-jurisdictional dispute should not prevent the timely provision of that service, in accordance with Jordan's Principle.

The United Nations Declaration on the Rights of Indigenous Peoples recognizes the importance of belonging to a community or nation, in accordance with the traditions and customs of the community or nation concerned.

Further, the Government of Ontario believes the following:

First Nations, Inuit and Métis children should be happy, healthy, resilient, grounded in their cultures and languages and thriving as individuals and as members of their families, communities and nations.

Honouring the connection between First Nations, Inuit and Métis children and their distinct political and cultural communities is essential to helping them thrive and fostering their well-being.

For these reasons, the Government of Ontario is committed, in the spirit of reconciliation, to working with First Nations, Inuit and Métis peoples to help ensure that wherever possible, they care for their children in accordance with their distinct cultures, heritages and traditions.

### PART I

#### PURPOSES AND INTERPRETATION

##### PURPOSES

#### Paramount purpose and other purposes

##### Paramount purpose

1 (1) The paramount purpose of this Act is to promote the best interests, protection and well-being of children.



## Other purposes

(2) The additional purposes of this Act, so long as they are consistent with the best interests, protection and well-being of children, are to recognize the following:

1. While parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent.
2. The least disruptive course of action that is available and is appropriate in a particular case to help a child, including the provision of prevention services, early intervention services and community support services, should be considered.
3. Services to children and young persons should be provided in a manner that,
  - i. respects a child's or young person's need for continuity of care and for stable relationships within a family and cultural environment,
  - ii. takes into account physical, emotional, spiritual, mental and developmental needs and differences among children and young persons,
  - iii. takes into account a child's or young person's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
  - iv. takes into account a child's or young person's cultural and linguistic needs,
  - v. provides early assessment, planning and decision-making to achieve permanent plans for children and young persons in accordance with their best interests, and
  - vi. includes the participation of a child or young person, the child's or young person's parents and relatives and the members of the child's or young person's extended family and community, where appropriate.
- ~~4. Wherever possible, services to children and young persons and their families should be provided in a manner that respects regional differences.~~
- ~~5. Wherever possible, services to children and young persons and their families should be provided in a manner that builds on the strengths of the families.~~
4. Services to children and young persons and their families should be provided in a manner that respects regional differences, wherever possible.
5. Services to children and young persons and their families should be provided in a manner that builds on the strengths of the families, wherever possible.
6. First Nations, Inuit and Métis peoples should be entitled to provide, wherever possible, their own child and family services, and all services to ~~First Nations, Inuit and Métis children and families~~ First Nations, Inuit and Métis children and young persons and their families should be provided in a manner that recognizes their cultures, heritages, traditions, connection to their communities, and the concept of the extended family.
7. Appropriate sharing of information, including personal information, in order to plan for and provide services is essential for creating successful outcomes for children and families.

## INTERPRETATION

### Interpretation

#### Definitions

2 (1) In this Act,

“agency” means a corporation; (“agence”)

“band” has the same meaning as in the *Indian Act* (Canada); (“bande”)

“Board” means the Child and Family Services Review Board continued under section 311; (“Commission”)

“child” means a person younger than 18; (“enfant”)

“child in care” means a child or young person who is receiving residential care from a service provider and includes,

(a) a child who is in the care of a foster parent, and

(b) a young person who is,

(i) detained in a place of temporary detention under the *Youth Criminal Justice Act* (Canada),

(ii) committed to a place of secure or open custody designated under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise, or

(iii) held in a place of open custody under section 147 of this Act; (“enfant recevant des soins”, “enfant qui reçoit des soins”)

“court” means the Ontario Court of Justice or the Family Court of the Superior Court of Justice; (“tribunal”)

“creed” includes religion; (“croyance”)

“customary care” means the care and supervision of a First Nations, Inuk or Métis child by a person who is not the child’s parent, according to the custom of the child’s band or First Nations, Inuit or Métis community; (“soins conformes aux traditions”)

“Director” means a Director appointed under subsection 52 (1); (“directeur”)

“extended family” means persons to whom a child is related, including through a spousal relationship or adoption and, in the case of a First Nations, Inuk or Métis child, includes any member of,

- (a) a band of which the child is a member,
- (b) a band with which the child identifies,
- (c) a First Nations, Inuit or Métis community of which the child is a member, and
- (d) a First Nations, Inuit or Métis community with which the child identifies; (“famille élargie”)

“First Nations, Inuit or Métis community” means a community listed by the Minister in a regulation made under section 67; (“communauté inuite, métisse ou de Premières Nations”)

“foster care” means the provision of residential care to a child, by and in the home of a person who,

- (a) receives compensation for caring for the child, except under the *Ontario Works Act, 1997* or the *Ontario Disability Support Program Act, 1997*, and
- (b) is not the child’s parent or a person with whom the child has been placed for adoption under Part VIII (Adoption and Adoption Licensing),

and “foster home” and “foster parent” have corresponding meanings; (“soins fournis par une famille d’accueil”, “famille d’accueil”, “parent de famille d’accueil”)

“licence” means a licence issued under Part VIII (Adoption and Adoption Licensing) or Part IX (Residential Licensing); a reference to a licence in Part VIII is to a licence issued under that Part and a reference to a licence in Part IX is to a licence issued under that Part; (“permis”)

“licensee” means the holder of a licence; (“titulaire de permis”)

“local director” means a local director appointed under section 37; (“directeur local”)

“mechanical restraints” means a device, material or equipment that reduces the ability of a person to move freely, and includes handcuffs, flex cuffs, leg irons, restraining belts, belly chains and linking chains; (“contentions mécaniques”)

“Minister” means the Minister of Children and Youth Services or such other member of the Executive Council as may be designated under the *Executive Council Act* to administer this Act; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“old Act” means the *Child and Family Services Act*; (“ancienne loi”)

“order” includes a refusal to make an order; (“arrêté, ordre et ordonnance”)

“personal information” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)

“physical restraint” means a holding technique to restrict a person’s ability to move freely but, for greater certainty, does not include,

- (a) restricting movement, physical redirection or physical prompting, if the restriction, redirection or prompting is brief, gentle and part of a behaviour teaching program, or
- (b) the use of helmets, protective mitts or other equipment to prevent a person from physically injuring or further physically injuring themselves; (“contention physique”)

“place of open custody” means a place or facility designated as a place of open custody under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise; (“lieu de garde en milieu ouvert”)

“place of open temporary detention” means a place of temporary detention in which the Minister has established an open detention program; (“lieu de détention provisoire en milieu ouvert”)



“place of secure custody” means a place or facility designated for the secure containment or restraint of young persons under subsection 24.1 (1) of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise; (“lieu de garde en milieu fermé”)

“place of secure temporary detention” means a place of temporary detention in which the Minister has established a secure detention program; (“lieu de détention provisoire en milieu fermé”)

“place of temporary detention” means a place or facility designated as a place of temporary detention under the *Youth Criminal Justice Act* (Canada); (“lieu de détention provisoire”)

“prescribed” means prescribed by regulations; (“prescrit”)

“program supervisor” means a program supervisor appointed under subsection 52 (2); (“superviseur de programme”)

“provincial director” means,

- (a) a person, the group or class of persons or the body appointed or designated by the Lieutenant Governor in Council or the Lieutenant Governor in Council’s delegate to perform any of the duties or functions of a provincial director under the *Youth Criminal Justice Act* (Canada), or
- (b) a person appointed under clause 143 (1) (a); (“directeur provincial”)

“record” means a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise, but does not include a computer program or other mechanism that can produce a record; (“dossier”)

“regulations” means the regulations made under this Act; (“règlements”)

“relative” means, with respect to a child, a person who is the child’s grandparent, great-uncle, great-aunt, uncle or aunt, including through a spousal relationship or adoption; (“membre de la parenté”)

“residential care” means boarding, lodging and associated supervisory, sheltered or group care provided for a child away from the home of the child’s parent, other than boarding, lodging or associated care for a child who has been placed in the lawful care and custody of a relative or member of the child’s extended family or the child’s community; (“soins en établissement”)

“residential placement” means a place where residential care is provided; (“placement en établissement”, “placé dans un établissement”)

“service” includes,

- (a) a service for a child with a developmental or physical disability or the child’s family,
- (b) a mental health service for a child or the child’s family,
- (c) a service related to residential care for a child,
- (d) a service for a child who is or may be in need of protection or the child’s family,
- (e) a service related to adoption for a child, the child’s family or others,
- (f) counselling for a child or the child’s family,
- (g) a service for a child or the child’s family that is in the nature of support or prevention and that is provided in the community,
- (h) a service or program for or on behalf of a young person for the purposes of the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act*, or
- (i) a prescribed service; (“service”)

“service provider” means,

- (a) the Minister,
- (b) a licensee,
- (c) a person or entity, including a society, that provides a service funded under this Act, or
- (d) a prescribed person or entity,

but does not include a foster parent; (“fournisseur de services”)

“society” means an agency designated as a children’s aid society under subsection 33 (1); (“société”)

“treatment” has the same meaning as in subsection 2 (1) of the *Health Care Consent Act, 1996*; (“traitement”)

“Tribunal” means the Licence Appeal Tribunal; (“Tribunal”)

“young person” means,

- (a) a person who is or, in the absence of evidence to the contrary, appears to be 12 or older but younger than 18 and who is charged with or found guilty of an offence under the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act*, or
- (b) if the context requires, any person who is charged under the *Youth Criminal Justice Act* (Canada) with having committed an offence while they were a young person or who is found guilty of an offence under the *Youth Criminal Justice Act* (Canada). (“adolescent”)

#### **Interpretation, “parent”**

- (2) Unless this Act provides otherwise, a reference in this Act to a parent of a child is deemed to be a reference to,
  - (a) the person who has lawful custody of the child; or
  - (b) if more than one person has lawful custody of the child, all of the persons who have lawful custody of the child, excluding any person who is unavailable or unable to act, as the context requires.

#### **Member of child’s community**

(3) For the purposes of this Act, the following persons are members of a child’s community:

- 1. A person who has ethnic, cultural or creedal ties in common with the child or with a parent, sibling or relative of the child.
- 2. A person who has a beneficial and meaningful relationship with the child or with a parent, sibling or relative of the child.

#### **Interpretation, child’s bands and First Nations, Inuit or Métis communities**

(4) In this Act, a reference to a child’s bands and First Nations, Inuit or Métis communities includes all of the following:

- 1. Any band of which the child is a member.
- 2. Any band with which the child identifies.
- 3. Any First Nations, Inuit or Métis community of which the child is a member.
- 4. Any First Nations, Inuit or Métis community with which the child identifies.

#### **Member of child’s or young person’s community**

(3) For the purposes of this Act, the following persons are members of a child’s or young person’s community:

- 1. A person who has ethnic, cultural or creedal ties in common with the child or young person or with a parent, sibling or relative of the child or young person.
- 2. A person who has a beneficial and meaningful relationship with the child or young person or with a parent, sibling or relative of the child or young person.

#### **Interpretation, child’s or young person’s bands and First Nations, Inuit or Métis communities**

(4) In this Act, a reference to a child’s or young person’s bands and First Nations, Inuit or Métis communities includes all of the following:

- 1. Any band of which the child or young person is a member.
- 2. Any band with which the child or young person identifies.
- 3. Any First Nations, Inuit or Métis community of which the child or young person is a member.
- 4. Any First Nations, Inuit or Métis community with which the child or young person identifies.

## **PART II CHILDREN’S AND YOUNG PERSONS’ RIGHTS**

### **RIGHTS OF CHILDREN AND YOUNG PERSONS RECEIVING SERVICES**

#### **Rights of children, young persons receiving services**

3 Every child and young person receiving services under this Act has the following rights:

- 1. To express their own views freely and safely about matters that affect them.
- 2. To be engaged through an honest and respectful dialogue about how and why decisions affecting them are made and to have their views given due weight, in accordance with their age and maturity.



- ~~3. To be consulted on the nature of the services provided or to be provided to them and advised of the decisions made in respect of those services.~~
- ~~4. To raise concerns or recommend changes with respect to the services provided or to be provided to them without interference or fear of coercion, discrimination or reprisal.~~
- 3. To be consulted on the nature of the services provided or to be provided to them, to participate in decisions about the services provided or to be provided to them and to be advised of the decisions made in respect of those services.
- 4. To raise concerns or recommend changes with respect to the services provided or to be provided to them without interference or fear of coercion, discrimination or reprisal and to receive a response to their concerns or recommended changes.
- 5. To be informed, in language suitable to their understanding, of their rights under this Part.
- 6. To be informed, in language suitable to their understanding, of the existence and role of the Provincial Advocate for Children and Youth and of how the Provincial Advocate for Children and Youth may be contacted.

### **Corporal punishment prohibited**

4 No service provider or foster parent shall inflict corporal punishment on a child or young person or permit corporal punishment to be inflicted on a child or young person in the course of the provision of a service to the child or young person.

### **Locking up restricted**

~~5 (1) No service provider or foster parent shall detain a child or young person or permit a child or young person to be detained in locked premises in the course of the provision of a service to the child or young person, except as Part VI (Youth Justice) and Part VII (Extraordinary Measures) authorize.~~

### **Application of subs. (1)**

(2) Subsection (1) does not prohibit the routine locking of premises at night for security.

### **Detention restricted**

5 No service provider or foster parent shall detain a child or young person or permit a child or young person to be detained in locked premises in the course of the provision of a service to the child or young person, except as Part VI (Youth Justice) and Part VII (Extraordinary Measures) authorize.

### **Physical restraint restricted**

5.1 No service provider or foster parent shall use or permit the use of physical restraint on a child or young person for whom the service provider or foster parent is providing services, except as the regulations authorize.

### **Mechanical restraints restricted**

6 No service provider or foster parent shall use or permit the use of mechanical restraints on a child or young person for whom the service provider or foster parent is providing services, except as Part VI (Youth Justice), Part VII (Extraordinary Measures) and the regulations authorize.

## **RIGHTS OF CHILDREN IN CARE**

### **Right to be heard in respect of decisions**

7 (1) For greater certainty, the rights under section 3 of a child in care apply to decisions affecting them, including decisions with respect to,

- (a) the child's or young person's treatment, education or training or work programs;
- (b) the child's or young person's creed, community identity and cultural identity; and
- (c) the child's or young person's placement in or discharge from a residential placement or transfer to another residential placement.

### **Views to be given due weight**

(2) The child's or young person's views with respect to the decisions described in subsection (1) shall be given due weight, in accordance with the child's or young person's age and maturity as required by paragraph 2 of section 3.

### **Right to be informed**

~~8 Upon admission to a residential placement, a child in care has a right to be informed, in language suitable to their understanding and to the extent that is practical given their level of understanding, of:~~

### **Right to be informed re residential placement admission**

8 Upon admission to a residential placement, and at regular intervals thereafter, or, where intervals are prescribed, at the prescribed intervals thereafter, a child in care has a right to be informed, in language suitable to their understanding, of,

- (a) their rights under this Part;

- (b) ~~the complaints procedure~~ the complaints procedures established under subsection 17 (1) and the further review available under section 18;
- (c) the review procedures available for children ~~12 or older~~ under sections 63, 64 and 65;
- (d) the review procedures available under section 149, in the case of a young person described in clause (b) of the definition of “child in care” in subsection 2 (1);
- (e) their responsibilities while in the placement; and
- (f) the rules governing day-to-day operation of the residential care, including disciplinary procedures.

#### **Rights of communication, etc.**

**9 (1)** A child in care has a right,

- ~~—(a) to speak in private with, visit and receive visits from members of their family regularly, subject to subsection (2);~~
- (a) to speak in private with, visit and receive visits from members of their family or extended family regularly, subject to subsection (2);
- ~~—(b) to speak in private with and receive visits from,~~
- (b) without unreasonable delay, to speak in private with and receive visits from,
  - (i) their lawyer,
  - (ii) another person representing the child or young person, including the Provincial Advocate for Children and Youth and members of the Provincial Advocate for Children and Youth’s staff,
  - (iii) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman’s staff, and
  - (iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada; and
- (c) to send and receive written communications that are not read, examined or censored by another person, subject to subsections (3) and (4).

#### **When child is in extended society care**

(2) A child in care who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) is not entitled as of right to speak with, visit or receive visits from a member of their family or extended family, except under an order for access made under Part V (Child Protection) or an openness order or openness agreement made under Part VIII (Adoption and Adoption Licensing).

#### **Opening, etc., of written communications to child in care**

- (3) Subject to subsection (4), written communications to a child in care,
  - (a) may be opened by the service provider or a member of the service provider’s staff in the child’s or young person’s presence and may be inspected for articles prohibited by the service provider;
  - (b) subject to clause (c), may be examined or read by the service provider or a member of the service provider’s staff in the child’s or young person’s presence, where the service provider believes on reasonable grounds that the contents of the written communication may cause the child or young person physical or emotional harm;
  - (c) shall not be examined or read by the service provider or a member of the service provider’s staff if it is to or from ~~the child’s or young person’s lawyer~~ a person described in subclause (1) (b) (i), (ii), (iii) or (iv); and
  - (d) shall not be censored or withheld from the child or young person, except that articles prohibited by the service provider may be removed from the written communication and withheld from the child or young person.

#### **Opening, etc., of young person’s written communications**

- (4) Written communications to and from a young person who is detained in a place of temporary detention or held in a place of secure custody or of open custody,
  - (a) may be opened by the service provider or a member of the service provider’s staff in the young person’s presence and may be inspected for articles prohibited by the service provider;
  - (b) may be examined or read by the service provider or a member of the service provider’s staff and may be withheld from the recipient in whole or in part where the service provider or the member of their staff believes on reasonable grounds that the contents of the written communications,
    - (i) may be prejudicial to the best interests of the young person, the public safety or the safety or security of the place of detention or custody, or
    - (ii) may contain communications that are prohibited under the *Youth Criminal Justice Act* (Canada) or by court order;



- (c) shall not be examined or read under clause (b) if it is to or from the young person's lawyer; and
- (d) shall not be opened and inspected under clause (a) or examined or read under clause (b) if it is to or from a person described in subclause (1) (b) (ii), (iii) or (iv).

### **Definition**

(5) In this section,

"written communications" includes mail and electronic communication in any form.

### **Conditions and limitations on visitors**

**10** (1) A service provider may impose such conditions and limitations on persons who are visiting a young person in a place of temporary detention, of open custody or of secure custody as are necessary to ensure the safety of staff or young persons in the facility.

### **Suspending visits in emergencies**

(2) Where a service provider has reasonable grounds to believe there are emergency circumstances within a facility that is a place of temporary detention, of open custody or of secure custody or within the community that may pose a risk to staff or young persons in the facility, the service provider may suspend visits until there are reasonable grounds to believe the emergency has been resolved and there is no longer a risk to staff or young persons in the facility.

### **Limited exception**

(3) Despite subsection (2), the service provider may not suspend visits from,

- (a) the Provincial Advocate for Children and Youth and members of the Provincial Advocate for Children and Youth's staff;
- (b) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman's staff; or
- (c) a member of the Legislative Assembly of Ontario or of the Parliament of Canada,

unless the provincial director determines that suspension is necessary to ensure public safety or the safety of staff or young persons in the facility.

### **Personal liberties**

**11** A child in care has a right,

- (a) to have reasonable privacy and possession of their own personal property, subject to section 152; and
- (b) to receive instruction and participate in activities of their choice related to their creed, community identity and cultural identity, subject to section 13.

### **Plan of care**

**12** (1) A child in care has a right to a plan of care designed to meet their particular needs, which shall be prepared within 30 days of the child's or young person's admission to the residential placement.

### **Rights to care**

(2) A child in care has a right,

- (a) to participate in the development of their individual plan of care and in any changes made to it;
- ~~(b) to receive meals that are well balanced, of good quality and appropriate for the child or young person;~~
- ~~(b) to have access to food that is of good quality and appropriate for the child or young person, including meals that are well balanced;~~
- (c) to be provided with clothing that is of good quality and appropriate for the child or young person, given their size and activities and prevailing weather conditions;
- (d) to receive medical and dental care, subject to section 13, at regular intervals and whenever required, in a community setting whenever possible;
- (e) to receive an education that corresponds to their aptitudes and abilities, in a community setting whenever possible; and
- ~~(f) to participate in recreational and athletic activities that are appropriate for their aptitudes and interests, in a community setting whenever possible.~~
- (f) to participate in recreational, athletic and creative activities that are appropriate for their aptitudes and interests, in a community setting whenever possible.

### **Parental consent, etc.**

**13** Subject to subsection 91 (7) and sections 107 and 108 (custody during adjournment, interim and extended society care), the parent of a child in care retains any right that the parent may have,

- (a) to direct the child's or young person's education and upbringing, in accordance with the child's or young person's creed, community identity and cultural identity; and
- (b) to consent to treatment on behalf of an incapable child or young person, if the parent is the child's or young person's substitute decision-maker in accordance with section 20 of the *Health Care Consent Act, 1996*.

### **SERVICE PROVIDERS' DUTIES IN RESPECT OF CHILDREN'S AND YOUNG PERSONS' RIGHTS**

#### **Children's, young persons' rights to respectful services**

**14** (1) Service providers shall respect the rights of children and young persons as set out in this Act.

#### **~~Children, young persons to be heard and represented~~**

~~(2) Service providers shall ensure that children and young persons and their parents have an opportunity, where appropriate, to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving.~~

#### **~~Criteria and safeguards re decisions~~**

~~(3) Service providers shall ensure that decisions affecting the interests and rights of children and young persons and their parents are made according to clear, consistent criteria and are subject to procedural safeguards.~~

#### **Children, young persons to be heard and represented**

(2) Service providers shall ensure that children and young persons and their parents have an opportunity to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving.

#### **Exception**

(3) Subsection (2) does not apply to a child or young person or parent of a child or young person if there is good cause for not giving that person an opportunity to be heard or represented as described in that subsection.

#### **Criteria and safeguards re decisions**

(4) Service providers shall ensure that decisions affecting the interests and rights of children and young persons and their parents are made according to clear, consistent criteria and are subject to appropriate procedural safeguards.

#### **Information about Provincial Advocate for Children and Youth to be displayed and available**

(5) Service providers shall,

- (a) prominently display at their premises, in a manner visible to persons receiving services, a notice advising of the existence and role of the Provincial Advocate for Children and Youth and of how the Provincial Advocate for Children and Youth may be contacted; and
- (b) make available on request informational materials produced by the Provincial Advocate for Children and Youth.

#### **French language services**

**15** Service providers shall, where appropriate, make services to children and young persons and their families available in the French language.

### **ALTERNATIVE DISPUTE RESOLUTION**

#### **Resolution of issues by prescribed method of alternative dispute resolution**

**16** (1) If a child is or may be in need of protection under this Act, a society shall consider whether a prescribed method of alternative dispute resolution could assist in resolving any issue related to the child or a plan for the child's care.

#### **First Nations, Inuk or Métis child**

(2) If the issue referred to in subsection (1) relates to a First Nations, Inuk or Métis child, the society shall consult with a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities to determine whether an alternative dispute resolution process established by the bands and communities or another prescribed alternative dispute resolution process could assist in resolving the issue.

#### **Children's Lawyer**

(3) If a society or a person, including a child, who is receiving child welfare services proposes that an alternative dispute resolution method or process referred to in subsection (1) or (2) be undertaken to assist in resolving an issue relating to a



child or a plan for the child's care, the Children's Lawyer may provide legal representation to the child if, in the opinion of the Children's Lawyer, such legal representation is appropriate.

### **Notice to band, community**

(4) If a society makes or receives a proposal that an alternative dispute resolution method or process referred to in subsection (1) or (2) be undertaken under subsection (3) in a matter involving a First Nations, Inuk or Métis child, the society shall give notice of the proposal to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

## **COMPLAINTS AND REVIEWS**

### **Complaints procedure**

~~17 (1) A service provider who provides residential care to children or young persons or who places children or young persons in residential placements shall establish a written procedure, in accordance with the regulations, for hearing and dealing with complaints regarding alleged violations of the rights under this Part of children in care.~~

### **Same**

~~(2) A service provider shall conduct a review or ensure that a review is conducted, in accordance with the procedure established under subsection (1), on the complaint of,~~

- ~~— (a) a child in care;~~
- ~~— (b) the child's or young person's parent; or~~
- ~~— (c) another person representing the child or young person;~~

~~and shall seek to resolve the complaint.~~

### **Complaints procedure**

17 (1) A service provider who provides residential care to children or young persons or who places children or young persons in residential placements shall establish a written procedure, in accordance with the regulations, for hearing and dealing with,

- (a) complaints regarding alleged violations of the rights under this Part of children in care; and
- (b) complaints by children in care or other persons affected by conditions or limitations imposed on visitors under subsection 10 (1) or suspensions of visits under subsection 10 (2).

### **Provincial Advocate for Children and Youth**

(2) The procedure established under subsection (1) must provide that the service provider shall tell the children in care that they may ask for the assistance of the Provincial Advocate for Children and Youth in,

- (a) making a complaint under clause (1) (a) or (b); and
- (b) requesting a further review under subsection 18 (1) of the complaint once the review by the service provider is completed.

### **Review of complaint**

(3) A service provider shall conduct a review or ensure that a review is conducted, in accordance with the procedure established under clause (1) (a) or (b), on the complaint of,

- (a) a child in care or a group of children in care;
- (b) the parent of a child in care who makes a complaint;
- (c) another person representing the child in care who makes a complaint; or
- (d) a person affected by a condition or limitation imposed on visitors under subsection 10 (1) or a suspension of visits under subsection 10 (2).

and shall seek to resolve the complaint.

### **Response to complainants**

(4) Upon completion of its review under subsection (3), the service provider shall inform each person who made the complaint, whether as an individual or as part of a group, of the results of the review.

### **Further review**

~~18 (1) Where a person referred to in subsection 17 (2) who makes a complaint and is not satisfied with the result of the review conducted under that subsection requests in writing that the Minister appoint a person to conduct a further review of the complaint, the Minister shall appoint a person who is not employed by the service provider to do so.~~

### **Further review**

18 (1) Where a person referred to in subsection 17 (3) makes a complaint, whether as an individual or as part of a group, and is not satisfied with the results of the review conducted under that subsection and requests in writing that the Minister appoint a person to conduct a further review of the complaint, the Minister shall appoint a person who is not employed by the service provider to do so.

### **Same**

(2) A person appointed under subsection (1) shall review the complaint in accordance with the regulations and may do so by holding a hearing.

### **Procedure**

(3) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2).

### **Powers of appointed person**

(4) A person appointed under subsection (1) has, for the purposes of the review, all the powers of a program supervisor appointed under subsection 52 (2).

### **Review and report within 30 days**

(5) A person appointed under subsection (1) shall, within 30 days after the day of the appointment, complete the review, set out in a report the person's findings and recommendations, including the reasons for not holding a hearing if none was held, and provide copies of the report to,

- (a) the person who made the complaint;
- (a) each person who made the complaint, whether as an individual or as part of a group;
- (b) the service provider; and
- (c) the Minister.

### **~~Minister to advise persons affected of any decision~~**

~~19 (1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 18 (5), the Minister shall advise the person who made the complaint and the service provider of the decision.~~

### **Minister to advise persons affected of any decision**

19 (1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 18 (5), the Minister shall advise the service provider and each person who made the complaint, whether as an individual or as part of a group, of the decision.

### **Remedies preserved**

(2) The Minister's decision referred to in subsection (1) does not affect any other remedy that may be available.

## **CONSENT AND VOLUNTARY SERVICES**

### **Consents and agreements**

20 (1) In this section,

“capacity” means the capacity to understand and appreciate the nature of a consent or agreement and the consequences of giving, withholding or withdrawing the consent or making, not making or terminating the agreement; (“jouit de toutes ses facultés mentales”)

“nearest relative”, when used in reference to a person who is younger than 16, means the person with lawful custody of the person, and when used in reference to a person who is 16 or older, means the person who would be authorized to give or refuse consent to a treatment on the person's behalf under the *Health Care Consent Act, 1996* if the person were incapable with respect to the treatment under that Act. (“membre de la parenté le plus proche”)

### **Elements of valid consent or agreement, etc.**

(2) A person's consent or withdrawal of a consent or participation in or termination of an agreement under this Act is valid if, at the time the consent is given or withdrawn or the agreement is made or terminated, the person,

- (a) has capacity;
- (b) is reasonably informed as to the nature and consequences of the consent or agreement, and of alternatives to it;
- (c) gives or withdraws the consent or executes the agreement or notice of termination voluntarily, without coercion or undue influence; and
- (d) has had a reasonable opportunity to obtain independent advice.

### **Where person lacks capacity**

(3) A person's nearest relative may give or withdraw a consent or participate in or terminate an agreement on the person's behalf if it has been determined on the basis of an assessment, not more than one year before the nearest relative acts on the person's behalf, that the person does not have capacity.

#### **Exceptions: ss. 177, 73 (2) (n)**

(4) Subsection (3) does not apply to a consent under section 177 (consents to adoption) or to a parent's consent referred to in clause 73 (2) (n) (child in need of protection).

### **Consent, etc., of minor**

(5) A person's consent or withdrawal of a consent or participation in or termination of an agreement under this Act is not invalid by reason only that the person is younger than 18.

#### **Exception: Part X**

(6) This section does not apply in respect of the collection, use or disclosure of personal information under Part X (Personal Information).

### **Consent to service**

#### **Consent to service: person older than 16**

~~21 (1) A service provider may provide a service to a person who is 16 or older only with the person's consent, except where the court orders under this Act that the service be provided to the person.~~

#### **Consent to service**

#### **Consent to service: person 16 or older**

21 (1) Subject to clause (2) (b) and subsection (4), a service provider may provide a service to a person who is 16 or older only with the person's consent, except where the court orders under this Act that the service be provided to the person.

#### **Consent to residential care: child younger than 16 or in society's care**

(2) A service provider may provide residential care to a child,

- (a) if the child is younger than 16, with the consent of the child's parent; and
- (b) if the child is in a society's lawful custody, with the society's consent,

except where this Act provides otherwise.

#### **Exception — Part V**

~~(3) Subsection (1) does not apply where a service is provided to a child under Part V (Child Protection).~~

#### **Exception — Part VI**

(4) Subsections (1) and (2) do not apply where a service is provided to a young person under Part VI (Youth Justice).

### **Discharge from residential placement**

(5) A child who is placed in a residential placement with the consent referred to in subsection (1) or (2) may only be discharged from the placement,

- (a) with the consent that would be required for a new residential placement;
- (b) where the placement is made under the authority of an agreement made under subsection 74 (1) (temporary care agreements), in accordance with section 75 (notice of termination); or
- (c) where the placement is made under the authority of an agreement made under subsection 76 (1) (agreements with 16 and 17 year olds), in accordance with subsection 76 (4) (notice of termination).

### **Transfer to another placement**

(6) A child who is placed in a residential placement with the consent referred to in subsection (1) or (2) shall not be transferred from one placement to another unless the consent that would be required for a new residential placement is given.

### **Child's views and wishes**

~~(7) Before a child is placed in or discharged from a residential placement or transferred from one residential placement to another with the consent referred to in subsection (2), the service provider shall take the child's views and wishes into account, given due weight in accordance with the child's age and maturity.~~

#### **Child's views and wishes**

(7) Before a child is placed in or discharged from a residential placement or transferred from one residential placement to another with the consent referred to in subsection (2), the service provider shall,



- (a) ensure that the child and the person whose consent is required under subsection (2) are made aware of and understand, as far as possible, the reasons for the placement, discharge or transfer; and
- (b) take the child's views and wishes into account, given due weight in accordance with the child's age and maturity.

**Application of *Health Care Consent Act, 1996***

(8) If the service being provided is a treatment to which the *Health Care Consent Act, 1996* applies, the consent provisions of that Act apply instead of this section.

**Counselling service: child 12 or older**

22 (1) A service provider may provide a counselling service to a child who is 12 or older with the child's consent, and no other person's consent is required, but if the child is younger than 16, the service provider shall discuss with the child at the earliest appropriate opportunity the desirability of involving the child's parent.

**Application of *Health Care Consent Act, 1996***

(2) If the counselling service being provided is a treatment to which the *Health Care Consent Act, 1996* applies, the consent provisions of that Act apply instead of subsection (1).

### PART III FUNDING AND ACCOUNTABILITY

**Definition**

23 In this Part,

“lead agency” means an entity designated as a lead agency under subsection 29 (1).

#### FUNDING OF SERVICES AND LEAD AGENCIES

**Provision of services directly or by others**

24 The Minister may,

- (a) provide services;
- (b) establish, operate and maintain premises for the provision of services;
- (c) provide funding, pursuant to agreements, to persons, agencies, municipalities, organizations and other prescribed entities,
  - (i) for the provision or coordination of services by them,
  - (ii) for the acquisition, maintenance or operation of premises used for the provision or coordination of services,
  - (iii) for the establishment of advisory groups or committees with respect to services,
  - (iv) for research, evaluation, planning, development, co-ordination or redesign with respect to services,
  - (v) for any other prescribed purpose; and
- (d) provide funding, pursuant to agreements, to lead agencies with respect to the performance of the functions referred to in subsection 29 (5).

**Services to persons older than 18**

25 The Minister may provide services and provide funding pursuant to agreements for the provision of services to persons who are not children, and to their families, as if those persons were children.

**Minister's advisory committee**

26 The Minister may appoint members to a Minister's advisory committee, established by order of the Lieutenant Governor in Council, to advise the Minister on child and family well-being.

**Security for payment of funds**

27 The Minister may, as a condition of making a payment under this Part or the regulations, require the recipient of the funds to secure them by way of mortgage, lien, charge, caution, registration of agreement or in such other manner as the Minister determines.

**Conditions on transfer of assets**

28 No service provider or lead agency shall transfer or assign any of its assets acquired with financial assistance from the Province of Ontario, except in accordance with the regulations or any term of an agreement with the Minister.

**Lead agencies**

**Designation**

29 (1) The Minister may designate an entity as a lead agency.

**Conditions of designation**

(2) The Minister may impose conditions on a designation made under this section and may at any time amend or remove the conditions or impose new ones.

**Revocation of designation**

(3) The Minister may revoke a designation made under this section.

**Categories of lead agencies**

(4) The Minister may assign lead agencies to different lead agency categories established by the regulations.

**Functions of lead agencies**

(5) Every lead agency shall perform the functions assigned to the lead agency's category by the regulations.

**List of lead agencies and categories**

(6) The Minister shall maintain a list of lead agencies and their categories.

**Public availability**

(7) The Minister shall make the list available to the public.

**Placements must comply with Act and regulations, etc.**

**30** No service provider shall place a child in a residential placement except in accordance with this Act, the regulations and the directives issued under this Act.

**DIRECTIVES AND COMPLIANCE ORDERS (LEAD AGENCIES AND SERVICE PROVIDERS)****Directives by Minister****Non-application**

**31** (1) This section and section 32 do not apply in respect of,

- (a) licensees under Part IX (Residential Licensing), when acting in their capacity as licensees under that Part; or
- (b) societies, when performing their functions under subsection 34 (1).

**Directives**

(2) The Minister may issue directives to service providers and lead agencies with respect to any prescribed matter.

**Binding**

(3) Every service provider and lead agency shall comply with every directive issued to it under this section.

**General or particular**

(4) A directive may be general or particular in its application.

**Law prevails**

(5) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the provision or rule prevails.

**Public availability**

(6) The Minister shall make every directive under this section available to the public.

**Non-application of Legislation Act, 2006**

(7) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a directive issued under this section.

**Compliance order****Grounds**

**32** (1) A program supervisor may make an order under subsection (2) if the program supervisor believes on reasonable grounds that a service provider or lead agency has failed to comply with,

- (a) this Act or the regulations;
- (b) a directive issued under section 31;
- (c) in the case of a service provider, an agreement referred to in clause 24 (c) or section 25; or
- (d) in the case of a lead agency,
  - (i) an agreement referred to in clause 24 (d);
  - (ii) a condition imposed on the lead agency's designation under subsection 29 (2), or

(iii) subsection 29 (5) (functions of lead agencies).

### **Order**

(2) For the purposes of subsection (1), a program supervisor may issue an order to the service provider or lead agency that requires either or both of the following:

1. That the service provider or lead agency do anything, or refrain from doing anything, to achieve compliance within the time period specified in the order.
2. That the service provider or lead agency prepare, submit and implement, within the time period specified in the order, a plan for achieving compliance.

### **Compliance required**

(3) A service provider or lead agency served with an order under this section shall comply with the order within the time specified in it.

### **Public availability**

~~(4) The Minister may make orders under this section available to the public.~~

### **Public availability**

~~(4) The Minister,~~

- ~~(a) may make orders under this section available to the public; and~~
- ~~(b) shall make a summary of each order under this section available to the public in accordance with the regulations.~~

### **Failure to comply**

(5) If a service provider or lead agency fails to comply with an order made under this section within the time specified in it, the Minister may terminate all or part of the funding provided to the service provider or lead agency.

## **CHILDREN'S AID SOCIETIES**

### **Children's aid society**

#### **Designation**

33 (1) The Minister may designate an agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions of a society set out in subsection 34 (1).

#### **Conditions on designation**

(2) For any or all of the functions of a society set out in subsection 34 (1), the Minister may impose conditions on the designation and may at any time amend or remove the conditions or impose new ones.

#### **Amendment of designation**

(3) The Minister may at any time amend a designation to provide that the society is no longer designated for a particular function or functions set out in subsection 34 (1) or to alter the society's territorial jurisdiction.

#### **Society deemed to be a local board**

(4) A society is deemed to be a local board of each municipality in which it has jurisdiction for the purposes of the *Ontario Municipal Employees Retirement System Act, 2006* and the *Municipal Conflict of Interest Act*.

#### **Not Crown agents**

(5) A society and its members, officers, employees and agents are not agents of the Crown in right of Ontario and shall not hold themselves out as such.

#### **No Crown liability**

(6) No action or other proceeding shall be instituted against the Crown in right of Ontario for any act or omission of a society or its members, officers, employees or agents.

### **Functions**

34 (1) The functions of a children's aid society are to,

- (a) investigate allegations or evidence that children may be in need of protection;
- (b) protect children where necessary;
- (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
- (d) provide care for children assigned or committed to its care under this Act;



- (e) supervise children assigned to its supervision under this Act;
- (f) place children for adoption under Part VIII (Adoption and Adoption Licensing); and
- (g) perform any other duties given to it by this Act or the regulations or any other Act.

#### **Prescribed standards, etc.**

- (2) A society shall,
  - (a) provide the prescribed standard of services in its performance of its functions; and
  - (b) follow the prescribed procedures and practices.

#### **Governance matters**

##### **First Nations, Inuit or Métis representatives on board**

**35** (1) A society that provides services to First Nations, Inuit or Métis children and families shall have the prescribed number of First Nations, Inuit or Métis representatives on its board of directors, appointed in the prescribed manner and for the prescribed terms.

##### **Employee may not sit on board**

- (2) An employee of a society shall not be a member of the society's board.

#### **By-laws**

- (3) The by-laws of a society shall include any provisions that are prescribed.

#### **No personal liability**

**36** No action or other proceeding shall be instituted against a member of the board of directors or an officer or employee of a society for any act done in good faith in the execution or intended execution of the person's duty or for an alleged neglect or default in good faith in the execution of that duty.

##### **Appointment of local director**

**37** Every society shall appoint a local director with the prescribed qualifications, powers and duties.

##### **Designation of places of safety**

**38** For the purposes of Part V (Child Protection), a local director may designate a place as a place of safety and may designate a class of places as places of safety.

### **FUNDING AND ACCOUNTABILITY AGREEMENTS**

#### **Funding**

##### **Payments by Minister**

**39** (1) The Minister shall pay to every society, out of money appropriated for the purpose by the Legislature, an amount determined in accordance with the regulations.

##### **Manner of payment**

- (2) An amount payable to a society under subsection (1), including advances on expenditures before they are incurred, shall be paid at the times and in the manner determined by the Minister.

##### **Accountability agreement**

**40** (1) Every society shall enter into an accountability agreement with the Minister as a condition of receiving funding.

##### **Term**

- (2) The term of an accountability agreement shall be for at least one of the Ministry's fiscal years but may be for a longer term specified by the Minister.

##### **Board approval**

- (3) The society's board of directors shall approve the accountability agreement before the society enters into the agreement.

##### **Content**

- (4) An accountability agreement must include a requirement that the society operate within its approved budget allocation and any other prescribed terms.

##### **If no agreement**

- (5) If the Minister and a society cannot agree on the terms of an accountability agreement by a date determined by the Minister, the Minister may set the terms of the agreement.

## DIRECTIVES AND COMPLIANCE ORDERS (SOCIETIES)

### Directives by Minister

**41** (1) The Minister may issue directives to societies, including directives with respect to financial and administrative matters and the performance of their functions under subsection 34 (1).

#### Binding

(2) A society shall comply with every directive issued to it under this section.

#### General or particular

(3) A directive may be general or particular in its application.

#### Law prevails

(4) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the provision or rule prevails.

#### Public availability

(5) The Minister shall make every directive under this section available to the public.

#### Non-application of *Legislation Act, 2006*

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a directive issued under this section.

### Compliance order

#### Grounds

**42** (1) A Director may make an order under subsection (2) if the Director believes on reasonable grounds that a society has failed to comply with,

- (a) this Act or the regulations;
- (b) a condition imposed on the society's designation under subsection 33 (2);
- (c) an accountability agreement entered into under section 40; or
- (d) a directive issued under section 41.

#### Order

(2) For the purposes of subsection (1), a Director may issue an order to the society that requires either or both of the following:

- 1. That the society do anything, or refrain from doing anything, to achieve compliance within the time period specified in the order.
- 2. That the society prepare, submit and implement, within the time period specified in the order, a plan for achieving compliance.

#### Compliance required

(3) A society served with an order under this section shall comply with the order within the time specified in it.

#### ~~Public availability~~

~~(4) The Minister may make orders made under this section available to the public.~~

#### Public availability

(4) The Minister,

- (a) may make orders under this section available to the public; and
- (b) shall make a summary of each order under this section available to the public in accordance with the regulations.

## MINISTER'S POWERS

### Powers of Minister

#### Grounds

**43** (1) The Minister may exercise a power set out in subsection (3) if,

- (a) a society has failed to comply with a compliance order made under section 42 within the time specified in it; or
- (b) the Minister considers it to be in the public interest to do so.

### **Public interest**

(2) In considering the public interest under clause (1) (b), the Minister may consider any matter the Minister regards as relevant including,

- (a) the quality of the financial and operational management of the society;
- (b) the society's capabilities with respect to its corporate governance; and
- (c) the quality of services provided by the society.

### **Powers**

(3) For the purposes of subsection (1), the Minister may do one or more of the following:

- 1. Order that the society cease a particular activity or take other corrective action within the time specified in the order.
- 2. Impose or amend conditions on the society's designation under subsection 33 (1).
- 3. Suspend, amend or revoke the designation of the society.
- 4. Appoint members of the society's board of directors if,
  - i. there are vacancies on the board, or
  - ii. there are no vacancies, but the appointment is for the purposes of designating that member as chair of the board under paragraph 7.
- 5. Remove members of the board and appoint others in their place.
- 6. Designate a chair of the board, if the office of chair is vacant.
- 7. Designate another chair of the board in place of the current chair.
- 8. Appoint a supervisor to operate and manage the affairs and activities of the society.

### **Notice of proposal**

(4) If the Minister proposes to act under subsection (3), the Minister shall give written notice of the proposal and reasons for it to the society.

### **Immediate action**

(5) Subsection (4) does not apply if,

- (a) in the Minister's opinion, the society has, by its conduct, acquiesced to the Minister's proposal;
- (b) the society has consented to the proposal; or
- (c) there are not enough members on the board to form a quorum.

### **Right to respond**

(6) A society that receives notice under subsection (4) may make written submissions to the Minister within 14 days after receipt of the notice or within a different time period specified in the notice.

### **Minister's decision**

(7) After considering a written submission from the society or, if no submission is received, after the time period under subsection (6) has expired, the Minister may carry out the proposal and shall give written notice of the decision and reasons for it to the society.

### **Decision final**

(8) The Minister's decision is final.

### **Provisional action**

(9) Despite subsection (4), the Minister may provisionally exercise any of the powers set out in subsection (3) where, in the Minister's opinion, it is necessary to do so to avert an immediate threat to the public interest or to a person's health, safety or well-being.

### **Notice**

(10) The Minister shall give written notice of the provisional exercise of the power and reasons for it to the society.

### **Decision final**

(11) The Minister's decision to provisionally exercise the power is final.



## **Appointments to board, etc.**

### **Members**

**44** (1) If the Minister appoints members of a society's board of directors under paragraph 4 or 5 of subsection 43 (3), the following rules apply:

1. The Minister shall ensure that the members do not constitute a majority of the number of members required to be on the board.
2. The members shall be appointed at the pleasure of the Minister for a period that does not exceed two years.
3. The members may serve as appointed members for no more than two consecutive years.
4. The members shall have the same rights and responsibilities as the members of the board that have been elected.

### **Chair**

(2) If the Minister designates a chair of the board of directors under paragraph 6 or 7 of subsection 43 (3), the following rules apply:

1. The chair may be designated from among the members of the board, including any members appointed by the Minister under paragraph 4 or 5 of subsection 43 (3).
2. The chair shall be designated at the pleasure of the Minister for a period that does not exceed two years.
3. The chair may serve as chair for no more than two consecutive years.
4. In the case of a designation under paragraph 7 of subsection 43 (3), the former chair may remain a member of the board.

### **Appointment of supervisor**

**45** (1) This section applies if a supervisor is appointed to operate and manage the affairs and activities of a society under paragraph 8 of subsection 43 (3).

#### **Term of appointment**

(2) The appointment of a supervisor is valid for a period not exceeding one year without the society's consent, but the Lieutenant Governor in Council may extend the period at any time.

#### **Powers and duties of supervisor**

(3) Unless the appointment provides otherwise, the supervisor has the exclusive right to exercise all the powers and perform all the duties of the society and its members, directors, Executive Director and officers.

#### **Same**

(4) The Minister may, in the appointment, specify the supervisor's powers and duties and the conditions governing them.

#### **Examples of powers and duties**

(5) Without limiting the generality of subsection (4), the supervisor's powers and duties may include the following:

1. Carrying on the society's affairs and activities.
2. Entering into contracts on the society's behalf.
3. Arranging for bank accounts to be opened in the society's name.
4. Authorizing persons to sign financial and other documents on the society's behalf.
5. Hiring or dismissing employees of the society.
6. Making, amending or revoking the society's by-laws.
7. Executing and filing documents on the society's behalf, including applications under the *Corporations Act* and notices and returns under the *Corporations Information Act*.

#### **Continued powers and duties of society, etc.**

(6) If, under the appointment, the society or its members, directors, Executive Director or officers continue to have any powers or duties during the supervisor's appointment, any exercise of that power or performance of that duty by the society or its members, directors, Executive Director or officers during that time is valid only if approved by the supervisor in writing.

#### **Assistance**

(7) The supervisor may apply to the Superior Court of Justice for an order directing a peace officer to assist the supervisor in occupying the premises of a society.

### **Report to Minister**

(8) The supervisor shall report to the Minister as the Minister requires.

### **Minister's directions**

(9) The Minister may issue directions to the supervisor with regard to any matter within the supervisor's jurisdiction, and the supervisor shall carry them out.

### **No proceedings against Crown**

(10) No proceeding, other than a proceeding referred to in subsection (12), shall be commenced against the Crown or the Minister with respect to the appointment of the supervisor or any act of the supervisor done in good faith in the execution or intended execution of any duty or power under this Act or the regulations, or for an alleged neglect or default in the execution in good faith of that duty or power.

### **No personal liability**

(11) No action or other proceeding shall be instituted against the supervisor for any act done in good faith in the execution or intended execution of any duty or power under this Act or the regulations, or for an alleged neglect or default in the execution in good faith of that duty or power.

### **Crown liability**

(12) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (11) of this section does not relieve the Crown of liability to which the Crown would otherwise be subject in respect of a tort committed by a supervisor.

### **Effect on board**

(13) On the appointment of a supervisor, the members of the society's board cease to hold office, unless the appointment provides otherwise.

### **Same**

(14) During the term of the supervisor's appointment, the powers of any member of the board who continues to hold office are suspended, unless the appointment provides otherwise.

### **No personal liability**

(15) No action or other proceeding shall be instituted against a member or former member of the board for anything done by the supervisor after the member's removal under subsection (13) or while the member's powers are suspended under subsection (14).

## **RESTRUCTURING**

### **Amalgamation by societies**

#### **Amalgamation proposal**

**46** (1) Two or more societies that are proposing to amalgamate and continue as one society shall submit an amalgamation proposal to the Minister containing the information and in the form specified by the Minister.

#### **Minister approval of proposal**

(2) The Minister may amend the amalgamation proposal and may approve it in whole or in part.

#### **Amalgamation agreement**

(3) The societies shall not enter into an agreement to amalgamate under subsection 113 (2) of the *Corporations Act* until they have received the Minister's approval of the amalgamation proposal under subsection (2). The amalgamation agreement must be consistent with the amalgamation proposal.

#### **Minister approval of amalgamation application**

(4) The societies shall not apply to amalgamate under subsection 113 (4) of the *Corporations Act* until the application has first received the approval of the Minister.

#### **Minister's directions**

(5) The Minister may, at any time, issue directions to the societies with regard to the proposed amalgamation, including requiring that a society provide information or documents to the Minister, and the society shall comply with the directions.

### **Restructuring by Minister's order**

**47** (1) If the Minister considers it to be in the public interest, including to enhance the efficiency, effectiveness and consistency of services, the Minister may order a society to do any of the following on or after the date set out in the order:

1. To amalgamate with one or more other societies.
2. To transfer all or any part of its operations to one or more other societies.

3. To cease operating, to dissolve or to wind up its operations.
4. To do anything or refrain from doing anything in order for the society to achieve anything under paragraphs 1 to 3.

#### **Minister's directions**

(2) The Minister may, in the order, include directions to provide the following to the Minister within the time set out in the order:

1. A plan to implement the order, including with respect to the transfer of assets, liabilities, rights and obligations, and of employees.
2. A timeline according to which the order will be implemented.
3. A proposed budget for implementation of the order.
4. Information about the status of the implementation of the order.
5. In the case of an order made under paragraph 1 of subsection (1), an amalgamation agreement for the Minister's approval.
6. Information with respect to any other matter specified by the Minister.

#### **Notice of proposed order**

(3) If the Minister proposes to make an order under subsection (1), the Minister shall give written notice of the proposed order and any directions contained in the order, and reasons for them, to each affected society.

#### **Notice to employees and bargaining agents**

(3.1) Each society that receives a notice under subsection (3) shall give a copy of the notice to affected employees and their bargaining agents.

#### **Right to respond re directions**

(4) A society may make written submissions to the Minister within 30 days after receipt of the notice or within a different time period specified in the notice. The written submissions may be with respect to any directions contained in the order, but not with respect to the order itself.

#### **Minister's decision re directions**

(5) After considering a written submission from the society or, if no submission is received, after the time period under subsection (4) has expired, the Minister may confirm, revoke or amend the directions contained in the order.

#### **Notice of order**

(6) The Minister shall give a copy of the order to each affected society.

#### **Duty of society**

(7) Each society that receives an order under subsection (6) shall,

- (a) give notice of the order to affected employees and their bargaining agents and to other persons or entities whose contracts are affected by the order; and
- (b) make ~~copies~~ copies of the order available to the public.

#### **Additional changes**

(8) The Minister may, at any time, revoke or amend an order made under this section, including any directions contained in the order. If the Minister does so, subsections (3) to (7) apply with necessary modifications.

#### **Compliance**

(9) A society that is the subject of an order under this section shall comply with it.

#### **Corporate powers**

(10) A society that is the subject of an order under this section is deemed to have the necessary powers to comply with the order, despite any of the following:

1. Any Act or regulation.
2. Any other instrument related to the corporate governance of a society, including the *Corporations Act* or any letters patent, supplementary letters patent or by-laws.

#### **Non-application of *Legislation Act, 2006***

(11) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under this section.



### **Minister approval of amalgamation agreement**

(12) When a society provides an amalgamation agreement to the Minister in accordance with directions given under paragraph 5 of subsection (2), the Minister may amend the agreement and may approve it in whole or in part.

### **Minister approval of amalgamation application**

(13) A society shall not apply to amalgamate under subsection 113 (4) of the *Corporations Act* until the application has first received the approval of the Minister.

### **Appointment of supervisor for restructuring**

48 (1) The Minister may appoint a supervisor to implement or facilitate the implementation of an order made under section 47 if,

- (a) an affected society has failed to comply with the order; or
- (b) in the Minister's opinion, there is undue delay, lack of progress or disagreement between or among affected parties that is preventing or is likely to prevent an affected society from complying with the order.

### **Application of other provisions**

(2) If the Minister proposes to appoint a supervisor under subsection (1), subsections 43 (4) to (8) and subsections 45 (2) to (15) apply with necessary modifications.

### **Board compliance**

(3) The members of an affected society's board of directors shall comply with decisions of a supervisor appointed under subsection (1) to facilitate the implementation of an order made under section 47 with regard to matters within the supervisor's jurisdiction.

### **Conflict with *Corporations Act*, etc.**

49 In the event of a conflict between sections 43 to 48 and any of the following, sections 43 to 48 prevail:

- 1. The *Corporations Act* or regulations made under that Act.
- 2. A society's letters patent, supplementary letters patent or by-laws.

### **Transfer of property held for charitable purpose**

50 (1) If an order made under section 47 directs a society to transfer to a transferee property that it holds for a charitable purpose, all gifts, trusts, bequests, devises and grants of property that form part of the property being transferred are deemed to be gifts, trusts, bequests, devises and grants of property to the transferee.

### **Specified purpose**

(2) If a will, deed or other document by which a gift, trust, bequest, devise or grant mentioned in subsection (1) is made indicates that the property being transferred is to be used for a specified purpose, the transferee shall use it for the specified purpose.

### **Application**

(3) Subsections (1) and (2) apply whether the will, deed or document by which the gift, trust, bequest, devise or grant is made, is made before or after this section comes into force.

### **No compensation**

51 (1) Despite any other Act, no person or entity, including a society, is entitled to any compensation for any loss or damages arising from any direct or indirect action that the Minister or a supervisor appointed under section 43 or 48 takes under this Act, including making an order under section 47.

### **Same, transfer of property**

(2) Despite any other Act, no person or entity, including a society, is entitled to compensation for any loss or damages, including loss of use, loss of revenue and loss of profit, arising from the transfer of property under an order made under section 47.

### **No expropriation**

(3) Nothing in this Part and nothing done or not done in accordance with this Part constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

## APPOINTMENTS AND DELEGATIONS

### Directors and program supervisors

#### Appointment of Director

**52** (1) The Minister may appoint any person as a Director to perform any or all of the duties and functions and exercise any or all of the powers of a Director under this Act and the regulations.

#### Appointment of program supervisor

(2) The Minister may appoint any person as a program supervisor to perform any or all of the duties and functions and exercise any or all of the powers of a program supervisor under this Act and the regulations.

#### Limitations, etc., on appointments

(3) The Minister may set out in an appointment made under this section any conditions or limitations to which it is subject.

#### Remuneration and expenses

(4) The remuneration and expenses of a person appointed under this section who is not a public servant employed under Part III of the *Public Service of Ontario Act, 2006* shall be fixed by the Minister and shall be paid out of money appropriated for the purpose by the Legislature.

#### Duties of Director with respect to societies

**53** (1) A Director shall exercise the powers and perform the duties of a society in any area in which no society is functioning.

#### Powers of local director

(2) In exercising the powers and performing the duties of a society under subsection (1), a Director has all the powers of a local director.

#### Delegation by Minister

**54** (1) Where, under this Act, a power is given to or a duty is imposed on the Minister, a Director, a program supervisor or an employee in the Ministry, the Minister may delegate that power or duty to any other person or class of persons.

#### Conditions, etc.

(2) The delegation must be made in writing and is subject to such limitations, conditions and requirements as are set out in it.

#### Deeds and contracts

(3) Section 6 of the *Executive Council Act* does not apply to a deed or contract that is executed under a delegation made under this section.

## REPORTS AND INFORMATION

### Reports and information to Minister

**55** Every service provider and lead agency shall,

- (a) make the prescribed reports and provide the prescribed information, including personal information, to the Minister, in the prescribed form and at the prescribed intervals; and
- (b) make a report and provide information, including personal information, to the Minister whenever the Minister requests it.

### Reports and information to prescribed entities

**56** Every service provider and lead agency shall provide the prescribed reports and the prescribed information to the prescribed entities in the prescribed manner.

### Information available to the public

**57** Every service provider and lead agency shall make the prescribed information available to the public in the prescribed manner.

## PROGRAM SUPERVISOR INSPECTIONS

### Inspection by program supervisor without a warrant

**58** (1) For the purpose of determining compliance with this Act, the regulations and the directives issued under this Act, a program supervisor may, at any reasonable time and without a warrant or notice, enter the following premises in order to conduct an inspection:

- 1. Premises where a service is provided under this Act.
- 2. Premises where a lead agency's function referred to in subsection 29 (5) is performed.
- 3. Business premises of a service provider.

#### 4. Business premises of a lead agency.

#### **Limitation, dwelling**

(2) The power to enter and inspect a premises described in subsection (1) shall not be exercised to enter and inspect any room or place actually being used as a dwelling, except with the consent of the occupier.

#### **Identification**

(3) A program supervisor conducting an inspection shall, upon request, produce proper identification.

#### **Application of other provisions**

(4) Sections 273 (powers on inspection) and 276 (admissibility of certain documents) apply with necessary modifications with respect to an inspection conducted under this section.

#### **Inspection by program supervisor with a warrant**

59 (1) A program supervisor may, without notice, apply to a justice for a warrant under this section.

#### **Issuance of warrant**

(2) A justice may issue a warrant authorizing a program supervisor named in the warrant to enter the premises specified in the warrant and to exercise any of the powers mentioned in subsection 273 (1), if the justice is satisfied on information under oath or affirmation,

- (a) that the premises is a premises described in subsection 58 (1);
- (b) in the case of a premises that is not used as a dwelling,
  - (i) that the program supervisor has been prevented from exercising a right of entry to the premises under section 58 or a power under subsection 273 (1), or
  - (ii) that there are reasonable grounds to believe that the program supervisor will be prevented from exercising a right of entry to the premises under section 58 or a power under subsection 273 (1); and
- (c) in the case of a premises that is used as a dwelling,
  - (i) that,
    - (A) the program supervisor believes on reasonable grounds that a service being provided, or the manner of providing it, is causing harm or is likely to cause harm to a person's health, safety or well-being as a result of non-compliance with this Act, the regulations or the directives issued under this Act, and
    - (B) it is necessary for the program supervisor to exercise the powers mentioned in subsection 273 (1) in order to inspect the service or the manner of providing it, or
  - (ii) that a ground exists that is prescribed for the purposes of this subclause.

#### **Expert help**

(3) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the program supervisor in the execution of the warrant.

#### **Expiry of warrant**

(4) A warrant issued under this section shall name a date on which it expires, which shall be no later than 30 days after the warrant is issued.

#### **Extension of time**

(5) A justice may extend the date on which a warrant issued under this section expires for an additional period of no more than 30 days, upon application without notice by the program supervisor named in the warrant.

#### **Use of force**

(6) A program supervisor named in a warrant issued under this section may use whatever force is necessary to execute the warrant and may call upon a peace officer for assistance in executing the warrant.

#### **Time of execution**

(7) A warrant issued under this section may be executed between 8 a.m. and 8 p.m. only, unless the warrant specifies otherwise.

#### **Other matters**

(8) Subsections 273 (2) to (6) and section 276 apply with necessary modifications with respect to the exercise of powers referred to in subsection (2) under a warrant issued under this section.



### Definition

(9) In this section,

“justice” means a provincial judge or a justice of the peace.

### Inspection report

**60** (1) After completing an inspection, a program supervisor shall prepare an inspection report and give a copy of the report to,

- (a) a Director;
- (b) the service provider or lead agency; and
- (c) any other prescribed person.

### All non-compliance to be documented

(2) If a program supervisor finds that a service provider or lead agency has not complied with a requirement of this Act, the regulations or a directive issued under this Act, the program supervisor shall document the non-compliance in the inspection report.

## REVIEW BY RESIDENTIAL PLACEMENT ADVISORY COMMITTEE

### Definitions

**61** In sections 62 to 65,

“advisory committee” means a residential placement advisory committee established under subsection 62 (1); (“comité consultatif”)

“institution” means,

- (a) a children’s residence, other than a maternity home, operated by the Minister or under the authority of a licence issued under Part IX (Residential Licensing) with the capacity of providing residential care in which residential care can be provided to 10 or more children at a time, or
- (b) a building, group of buildings or part of a building, designated by a Director, in which residential care can be provided to 10 or more children at a time; (“foyer”)

“residential placement” does not include,

- (a) a placement made under the *Youth Criminal Justice Act* (Canada) or under Part VI (Youth Justice),
- (b) commitment to a secure treatment program under Part VII (Extraordinary Measures), or
- (c) a placement with a person who is neither a service provider nor a foster parent; (“placement en établissement”)

“special need” means a need that is related to or caused by a developmental disability or a behavioural, emotional, physical, mental or other disability. (“besoin particulier”)

### Residential placement advisory committees

~~**62** (1) The Minister may establish residential placement advisory committees, each consisting of one or more persons whom the Minister considers appropriate, including, if the Minister wishes, a representative of a band or First Nations, Inuit or Métis community, and shall specify the territorial jurisdiction of each advisory committee.~~

### Residential placement advisory committees

**62** (1) The Minister may establish residential placement advisory committees and shall specify the territorial jurisdiction of each advisory committee.

### Composition

(1.1) Each residential placement advisory committee shall consist of persons whom the Minister considers appropriate, which may include,

- (a) persons engaged in providing services;
- (b) other persons who have demonstrated an informed concern for the welfare of children;
- (c) one representative of the Ministry; and
- (d) if the Minister wishes, a representative of a band or First Nations, Inuit or Métis community.

### Payments to members, hiring of staff

(2) The Minister may pay allowances and reasonable travelling expenses to the members of an advisory committee, and may authorize an advisory committee to hire support staff.

### **Duties of advisory committee**

(3) An advisory committee has a duty to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential care and alternatives to residential care, to conduct reviews under section 63 and to name persons for the purpose of subsection 74 (11) (contact with child under temporary care agreement), and has such further duties as are prescribed.

### **Reports to Minister**

(4) An advisory committee shall make a report of its activities to the Minister ~~whenever the Minister requests it annually and at any other time requested by the Minister.~~

### **Review by advisory committee**

#### **Mandatory review**

**63** (1) An advisory committee shall review,

- (a) every residential placement in an institution of a child who resides within the advisory committee's jurisdiction, if the residential placement is intended to last or actually lasts 90 days or more,
  - (i) as soon as possible, but no later than 45 days after the day on which the child is placed in the institution,
  - (ii) unless the residential placement is reviewed under subclause (i), within 12 months of the establishment of the advisory committee or within such longer period as the Minister allows, and
  - (iii) while the residential placement continues, at least once during each nine-month period after the review under subclause (i) or (ii);
- (b) every residential placement of a child ~~12 or older~~ who objects to the residential placement and resides within the advisory committee's jurisdiction,
  - (i) within the week immediately following the day that is 14 days after the child is placed, and
  - (ii) while the residential placement continues, at least once during each nine-month period after the review under subclause (i); and
- (c) an existing or proposed residential placement of a child that the Minister refers to the advisory committee, within 30 days of the referral.

#### **Discretionary review**

(2) An advisory committee may at any time review or re-review, on a person's request or on its own initiative, an existing or proposed residential placement of a child who resides within the advisory committee's jurisdiction.

#### **Review to be informal, etc.**

(3) An advisory committee shall conduct a review under this section in an informal manner and in the absence of the public, and in the course of the review may,

- (a) interview the child, members of the child's family and any representatives of the child and family;
- (b) interview persons engaged in providing services and other persons who may have an interest in the matter or may have information that would assist the advisory committee;
- (c) examine documents and reports that are presented to the committee; and
- (d) examine records relating to the child and members of the child's family that are disclosed to the committee.

### **Service providers to assist advisory committee**

(4) At an advisory committee's request, a service provider shall assist and co-operate with the advisory committee in its conduct of a review.

### **Matters to be considered**

(5) In conducting a review, an advisory committee shall,

- (a) consider whether the child has a special need;
- (a.1) consider the child's views and wishes, given due weight in accordance with the child's age and maturity;
- (b) consider what programs are available for the child in the residential placement or proposed residential placement, and whether a program available to the child is likely to benefit the child;
- (c) consider whether the residential placement or proposed residential placement is appropriate for the child in the circumstances;
- (d) if it considers that a less restrictive alternative to the residential placement would be more appropriate for the child in the circumstances, specify that alternative;

- (e) consider the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and
- (f) in the case of a First Nations, Inuk or Métis child, also consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community.

### **Advisory committee's recommendations**

#### **Persons to be advised**

**64** (1) An advisory committee that conducts a review shall advise the following persons of its recommendations as soon as the review has been completed:

- 1. The service provider.
- 2. Any representative of the child.
- 3. The child's parent or, where the child is in a society's lawful custody, the society.
- ~~4. The child, where it is reasonable to expect the child to understand.~~
- 4. The child, in language suitable to the child's understanding.
- 5. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1, 2, 3 and 4 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### **Child to be advised of right to review by Board of residential placement**

(2) An advisory committee that conducts a review shall advise the child of the child's right to a further review under section ~~65 if the child is 12 or older.~~

#### **Report to Minister**

(3) An advisory committee that conducts a review shall, within 30 days of completing the review, make a report of its findings and recommendations to the Minister.

#### **Recommendation for less restrictive service**

(4) Where an advisory committee considers that the provision of a less restrictive service to a child would be more appropriate for the child than the residential placement, the advisory committee shall recommend in its report under subsection (3) that the less restrictive service be provided to the child.

#### **Review by Board**

##### **Child may request review**

**65** (1) A child who ~~is 12 or older and~~ is in a residential placement to which the child objects may apply to the Board for a determination of where the child should remain or be placed, if the residential placement has been reviewed by an advisory committee under section 63 and,

- (a) the child is dissatisfied with the advisory committee's recommendations; or
- (b) the advisory committee's recommendations are not followed.

##### **Board to conduct review**

(2) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing.

##### **Notice to child of hearing**

(3) The Board shall advise the child whether it intends to hold a hearing or not within 10 days of receiving the child's application.

##### **Parties**

(4) The parties to a hearing under this section are,

- (a) the child;
- (b) the child's parent or, where the child is in a society's lawful custody, the society;
- (c) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a) and (b) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities; and
- (d) any other persons that the Board specifies.

##### **Time for determination**

(5) The Board shall complete its review and make a determination within 30 days of receiving a child's application, unless,



- (a) the Board holds a hearing with respect to the application; and
- (b) the parties consent to a longer period for the Board's determination.

#### **Board's order**

- (6) After conducting a review under subsection (2), the Board may,
- (a) order that the child be transferred to another residential placement, if the Board is satisfied that the other residential placement is available;
  - (b) order that the child be discharged from the residential placement; or
  - (c) confirm the existing residential placement.

### **OFFENCES**

#### **Offences**

**66** (1) A person or entity is guilty of an offence if the person or entity,

- (a) contravenes section 55 (reports and information);

(a.1) contravenes section 56 (reports and information to prescribed entities);

- (b) contravenes section 57 (information available to public);
- (c) knowingly provides false information in a statement, report or return required to be provided under this Part or the regulations.

#### **Penalty**

(2) A person or entity convicted of an offence under subsection (1) is liable to a fine of not more than \$5,000.

#### **Offence — obstruction of program supervisor**

(3) A person is guilty of an offence if the person hinders, obstructs or interferes with a program supervisor conducting an inspection under this Part, or otherwise impedes a program supervisor in exercising the powers or performing the duties of a program supervisor under this Part.

#### **Penalty**

(4) A person convicted of an offence under subsection (3) is liable to a fine of not more than \$5,000.

#### **Limitation**

(5) A proceeding in respect of an offence under subsection (1) or (3) shall not be commenced more than two years after the day on which evidence of the offence first came to the knowledge of the Director or program supervisor.

#### **Directors, officers and employees**

(6) If a corporation commits an offence under this section, a director, officer or employee of the corporation who authorized, permitted or concurred in the commission of the offence is also guilty of the offence.

### **PART IV**

## **FIRST NATIONS, INUIT AND MÉTIS CHILD AND FAMILY SERVICES**

#### **Regulations listing First Nations, Inuit and Métis communities**

**67** (1) The Minister may make regulations establishing lists of First Nations, Inuit and Métis communities for the purposes of this Act.

#### **More than one community**

(2) A regulation made under subsection (1) may list one or more communities as a First Nations, Inuit or Métis community.

#### **Consent of representatives**

(3) Before making a regulation under subsection (1), the Minister must obtain the consent of the community's representatives.

#### **Agreements with bands and First Nations, Inuit or Métis communities**

**68** The Minister may, for the provision of services,

- (a) make agreements with bands and First Nations, Inuit or Métis communities and with any other parties whom the bands or communities choose to involve; and
- (b) provide funding to ~~the entities~~ the persons or entities referred to in clause (a) pursuant to such agreements.

### **Designation of child and family service authority**

**69 (1)** A band or First Nations, Inuit or Métis community may designate a body as a First Nations, Inuit or Métis child and family service authority.

#### **Agreements, etc.**

(2) Where a band or First Nations, Inuit or Métis community has designated a First Nations, Inuit or Métis child and family service authority, the Minister,

- (a) shall, at the band's or community's request, enter into negotiations for the provision of services by the child and family service authority;
- (b) may enter into agreements with the child and family service authority and, if the band or community agrees, any other person, for the provision of services; and
- (c) may designate the child and family service authority, with its consent, as a society under subsection 33 (1).

### **Subsidy for customary care**

**70** If a band or First Nations, Inuit or Métis community declares that a First Nations, Inuit or Métis child is being cared for under customary care, a society or entity may grant a subsidy to the person caring for the child.

### **Consultation with bands and First Nations, Inuit or Métis communities**

~~**71** A society or agency that provides services or exercises powers under this Act with respect to First Nations, Inuit or Métis children shall regularly consult with their bands and First Nations, Inuit or Métis communities about the provision of the services or the exercise of the powers and about matters affecting the children, including:~~

### **Consultation with bands and First Nations, Inuit or Métis communities**

**71** A society, person or entity that provides services or exercises powers under this Act with respect to First Nations, Inuit or Métis children or young persons shall regularly consult with their bands and First Nations, Inuit or Métis communities about the provision of the services or the exercise of the powers and about matters affecting the children or young persons, including,

- ~~— (a) the apprehension of children and the placement of children in residential care;~~
- (a) bringing children to a place of safety and the placement of children in residential care;
- (b) the provision of family support services;
- (c) the preparation of plans for the care of children;
- (d) status reviews under Part V (Child Protection);
- (e) temporary care agreements under Part V (Child Protection);
- (f) society agreements with 16 and 17 year olds under Part V (Child Protection);
- (g) adoption placements;
- (h) the establishment of emergency houses; and
- (i) any other matter that is prescribed.

### **Consultation in specified cases**

~~**72** A society or agency that proposes to provide a prescribed service to a First Nations, Inuit or Métis child, or to exercise a prescribed power under this Act in relation to such a child, shall consult with a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities in accordance with the regulations.~~

### **Consultation in specified cases**

**72** A society, person or entity that proposes to provide a prescribed service to a First Nations, Inuit or Métis child or young person, or to exercise a prescribed power under this Act in relation to such a child or young person, shall consult with a representative chosen by each of the child's or young person's bands and First Nations, Inuit or Métis communities in accordance with the regulations.

## **PART V CHILD PROTECTION**

### **INTERPRETATION**

#### **Interpretation**

#### **Definitions**

**73 (1)** In this Part,

“child protection worker” means a Director, a local director or a person who meets the prescribed requirements and who is authorized by a Director or local director for the purposes of section 80 (commencing child protection proceedings) and for other prescribed purposes; (“préposé à la protection de l’enfance”)

“extra-provincial child protection order” means a temporary or final order made by a court of another province or a territory of Canada, or of a prescribed jurisdiction outside Canada if it meets prescribed conditions, pursuant to child welfare legislation of that province, territory or other jurisdiction, placing a child into the care and custody of a child welfare authority or other person named in the order; (“ordonnance extraprovinciale de protection d’un enfant”)

“parent”, when used in reference to a child, means each of the following persons, but does not include a foster parent:

1. A parent of the child under section 6, 8, 9, 10, 11 or 13 of the *Children’s Law Reform Act*.
2. In the case of a child conceived through sexual intercourse, an individual described in one of paragraphs 1 to 5 of subsection 7 (2) of the *Children’s Law Reform Act*, unless it is proved on a balance of probabilities that the sperm used to conceive the child did not come from the individual.
3. An individual who has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.
4. In the case of an adopted child, a parent of the child as provided for under section 214 or 215.
5. An individual who has lawful custody of the child.
6. An individual who, during the 12 months before intervention under this Part, has demonstrated a settled intention to treat the child as a child of the individual’s family, or has acknowledged parentage of the child and provided for the child’s support.
7. An individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child.
8. An individual who acknowledged parentage of the child by filing a statutory declaration under section 12 of the *Children’s Law Reform Act* as it read before the day subsection 1 (1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016 came into force; (“parent”)

“place of safety” means a foster home, a hospital, a person’s home that satisfies the requirements of subsection (5) or a place or one of a class of places designated as a place of safety by a Director or local director under section 38, but does not include a place of temporary detention, of open custody or of secure custody; (“lieu sûr”)

### **Child in need of protection**

(2) A child is in need of protection where,

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person’s,
  - (i) failure to adequately care for, provide for, supervise or protect the child, or
  - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
- (b) there is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person’s,
  - (i) failure to adequately care for, provide for, supervise or protect the child, or
  - (ii) pattern of neglect in caring for, providing for, supervising or protecting the child;
- (c) the child has been sexually abused or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child;
- (d) there is a risk that the child is likely to be sexually abused or sexually exploited as described in clause (c);
- (e) the child requires treatment to cure, prevent or alleviate physical harm or suffering and the child’s parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996* and the parent is a substitute decision-maker for the child, the parent refuses or is unavailable or unable to consent to the treatment on the child’s behalf;
- (f) the child has suffered emotional harm, demonstrated by serious,
  - (i) anxiety,
  - (ii) depression,
  - (iii) withdrawal,



- (iv) self-destructive or aggressive behaviour, or
- (v) delayed development,

and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;

- (g) the child has suffered emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to the treatment to remedy or alleviate the harm;
- (h) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;
- (i) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) and that the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment to prevent the harm;
- (j) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide treatment or access to treatment, or where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to the treatment to remedy or alleviate the condition;
- (k) the child's parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;
- (l) the child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment;
- (m) the child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately;
- (n) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is 12 or older, with the child's consent, ~~to be dealt with under this Part for the matter to be dealt with under this Part~~; or
- (o) the child is 16 or 17 and a prescribed circumstance or condition exists.

#### **Best interests of child**

~~(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that the person considers relevant:~~

- ~~—1. The child's views and wishes, given due weight in accordance with the child's age and maturity.~~
- ~~—2. The child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.~~
- ~~—3. The child's physical, mental and emotional level of development.~~
- ~~—4. The child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression.~~
- ~~—5. The child's cultural and linguistic heritage.~~
- ~~—6. The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family.~~
- ~~—7. The child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community.~~
- ~~—8. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.~~
- ~~—9. The merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent.~~
- ~~—10. The effects on the child of delay in the disposition of the case.~~

- 11. The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent.
- 12. The degree of risk, if any, that justified the finding that the child is in need of protection.
- 13. Any other relevant circumstance.

#### **Best interests of First Nations, Inuk or Métis child**

(4) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is a First Nations, Inuk or Métis child, the person shall also take into consideration the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community.

#### **Best interests of child**

- (3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,
- (a) consider the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained;
  - (b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and
  - (c) consider any other circumstance of the case that the person considers relevant, including,
    - (i) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
    - (ii) the child's physical, mental and emotional level of development,
    - (iii) the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
    - (iv) the child's cultural and linguistic heritage,
    - (v) the importance for the child's development of a positive relationship with a parent and a secure place as a member of a family,
    - (vi) the child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community,
    - (vii) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity,
    - (viii) the merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent,
    - (ix) the effects on the child of delay in the disposition of the case,
    - (x) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent, and
    - (xi) the degree of risk, if any, that justified the finding that the child is in need of protection.

#### **Place of safety**

- (5) For the purposes of the definition of "place of safety" in subsection (1), a person's home is a place of safety for a child if,
- (a) the person is a relative of the child or a member of the child's extended family or community; and
  - (b) a society or, in the case of a First Nations, Inuk or Métis child, a child and family service authority, has conducted an assessment of the person's home in accordance with the prescribed procedures and is satisfied that the person is willing and able to provide a safe home environment for the child.
  - (b) a society or, in the case of a First Nations, Inuk or Métis child, a society or a child and family service authority, has conducted an assessment of the person's home in accordance with the prescribed procedures and is satisfied that the person is willing and able to provide a safe home environment for the child.

#### **Definition, child and family service authority**

- (6) In subsection (5),

"child and family service authority" means a First Nations, Inuit or Métis child and family service authority designated under section 69.

## VOLUNTARY AGREEMENTS

### Temporary care agreement

74 (1) A person who is temporarily unable to care adequately for a child in the person's custody, and the society having jurisdiction where the person resides, may make a written agreement for the society's care and custody of the child.

### Older child to be party to agreement

(2) No temporary care agreement shall be made in respect of a child who is 12 or older unless the child is a party to the agreement.

### Exception: developmental disability

(3) Subsection (2) does not apply where it has been determined on the basis of an assessment not more than one year before the agreement is made, that the child does not have capacity to participate in the agreement because of a developmental disability.

### Duty of society

(4) A society shall not make a temporary care agreement unless the society,

- (a) has determined that an appropriate residential placement that is likely to benefit the child is available; and
- (b) is satisfied that no course of action less disruptive to the child, such as care in the child's own home, is able to adequately protect the child.

### Term of agreement limited

(5) No temporary care agreement shall be made for a term exceeding six months, but the parties to a temporary care agreement may, with a Director's written approval, agree to extend it for a further period or periods if the total term of the agreement, as extended, does not exceed 12 months.

### Time limit

(6) No temporary care agreement shall be made or extended so as to result in a child being in a society's care and custody, for a period exceeding,

- (a) 12 months, if the child is younger than 6 on the day the agreement is entered into or extended; or
- (b) 24 months, if the child is 6 or older on the day the agreement is entered into or extended.

### Calculating time in care

(7) The time during which a child has been in a society's care and custody pursuant to the following shall be counted in calculating the period referred to in subsection (6):

1. An interim society care order made under paragraph 2 of subsection 98 (1).
2. A temporary care agreement under subsection (1) of this section.
3. A temporary order made under clause 91 (2) (d).

### Previous periods to be counted

(8) The period referred to in subsection (6) shall include any previous periods that the child was in a society's care and custody as described in subsection (7) other than periods that precede a continuous period of five or more years that the child was not in a society's care and custody.

### Authority to consent to medical treatment may be transferred

(9) A temporary care agreement may provide that, where the child is found incapable of consenting to treatment under the *Health Care Consent Act, 1996*, the society is entitled to act in the place of a parent in providing consent to treatment on the child's behalf.

### Contents of temporary care agreement

(10) A temporary care agreement shall include the following:

1. A statement by all the parties to the agreement that the child's care and custody are transferred to the society.
2. A statement by all the parties to the agreement that the child's placement is voluntary.
3. A statement, by the person referred to in subsection (1), that the person is temporarily unable to care for the child adequately and has discussed with the society alternatives to residential placement of the child.
4. An undertaking by the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care.



5. If it is not possible for the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care, the person's designation of another person who is willing to do so.
6. The name of the individual who is the primary contact between the society and the person referred to in subsection (1).
7. Such other provisions as are prescribed.

#### **Designation by advisory committee**

(11) Where the person referred to in subsection (1) does not give an undertaking under paragraph 4 of subsection (10) or designate another person under paragraph 5 of subsection (10), a residential placement advisory committee established under subsection 62 (1) that has jurisdiction may, in consultation with the society, name a suitable person who is willing to maintain contact with the child and be involved in the child's care.

#### **Variation of agreement**

(12) The parties to a temporary care agreement may vary the agreement from time to time in a manner that is consistent with this Part and the regulations made under it.

#### **Agreement expires at 18**

(13) No temporary care agreement shall continue beyond the 18th birthday of the person who is its subject.

#### **Notice of termination of agreement**

75 (1) A party to a temporary care agreement may terminate the agreement at any time by giving every other party written notice that the party wishes to terminate the agreement.

#### **When notice takes effect**

(2) Where notice is given under subsection (1), the agreement terminates on the expiry of five days, or such longer period not exceeding 21 days as the agreement specifies, after the day on which every other party has actually received the notice.

#### **Society response to notice of termination**

(3) Where notice of a wish to terminate a temporary care agreement is given by or to a society under subsection (1), the society shall as soon as possible, and in any event before the agreement terminates under subsection (2),

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made; ~~or~~
- (b) where the society is of the opinion that the child would be in need of protection if returned to the person referred to in clause (a), bring the child before the court under this Part to determine whether the child would be in need of protection in that case; or
- (c) where the child is 16 or 17 and the criteria set out in clauses 76 (1) (a), (b), (c) and (d) are met, make a written agreement with the child under subsection 76 (1).

#### **Expiry of agreement**

(4) Where a temporary care agreement expires or is about to expire and is not extended, the society shall, before the agreement expires or as soon as practicable thereafter, but in any event within 21 days after the agreement expires,

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made; ~~or~~
- (b) where the society is of the opinion that the child would be in need of protection if returned to the person referred to in clause (a), bring the child before the court under this Part to determine whether the child would be in need of protection in that case; or
- (c) where the child is 16 or 17 and the criteria set out in clauses 76 (1) (a), (b), (c) and (d) are met, make a written agreement with the child under subsection 76 (1).

#### **Society agreements with 16 and 17 year olds**

76 (1) The society and a child who is 16 or 17 may make a written agreement for services and supports to be provided for the child where,

- (a) the society has jurisdiction where the child resides;
- (b) the society has determined that the child is or may be in need of protection;
- (c) the society is satisfied that no course of action less disruptive to the child, such as care in the child's own home or with a relative, neighbour or other member of the child's community or extended family, is able to adequately protect the child; and
- (d) the child wants to enter into the agreement.

### **Term of agreement**

(2) The agreement may be for a period not exceeding 12 months, but may be renewed if the total term of the agreement, as extended, does not exceed 24 months.

### **Previous or current involvement with society not a bar to agreement**

(3) A child may enter into an agreement under this section regardless of any previous or current involvement with a society, and without regard to any time during which the child has been in a society's care pursuant to an agreement made under section 74 (1) or pursuant to an order made under clause 91 (2) (d) or paragraph 2 or 3 of subsection 98 (1).

### **Notice of termination of agreement**

(4) A party to an agreement made under this section may terminate the agreement at any time by giving every other party written notice that the party wishes to terminate the agreement.

### **Agreement expires at 18**

(5) No agreement made under this section shall continue beyond the 18th birthday of the person who is its subject.

### **Current agreements and orders must be terminated first**

(6) Despite subsection (3), an agreement ~~may not be made~~ may not come into force under this section until any temporary care agreement under section 74 or order for the care or supervision of a child under this Part is terminated.

### **Representation by Children's Lawyer**

(7) The Children's Lawyer may provide legal representation to the child entering into an agreement under this section if, in the opinion of the Children's Lawyer, such legal representation is appropriate.

## **LEGAL REPRESENTATION**

### **Legal representation of child**

77 (1) A child may have legal representation at any stage in a proceeding under this Part.

### **Court to consider issue**

(2) Where a child does not have legal representation in a proceeding under this Part, the court,

- (a) shall, as soon as practicable after the commencement of the proceeding; and
- (b) may, at any later stage in the proceeding,

determine whether legal representation is desirable to protect the child's interests.

### **Direction for legal representation**

(3) Where the court determines that legal representation is desirable to protect a child's interests, the court shall direct that legal representation be provided for the child.

### **Criteria**

(4) Where,

- (a) the court is of the opinion that there is a difference of views between the child and a parent or a society, and the society proposes that the child be removed from a person's care or be placed in interim or extended society care under paragraph 2 or 3 of subsection 98 (1);
- (b) the child is in the society's care and,
  - (i) no parent appears before the court, or
  - (ii) it is alleged that the child is in need of protection within the meaning of clause 73 (2) (a), (c), (f), (g) or (j); or
- (c) the child is not permitted to be present at the hearing,

legal representation is deemed to be desirable to protect the child's interests, unless the court is satisfied, taking into account the child's views and wishes, given due weight in accordance with the child's age and maturity, that the child's interests are otherwise adequately protected.

### **Where parent a minor**

(5) Where a child's parent is younger than 18, the Children's Lawyer shall represent the parent in a proceeding under this Part unless the court orders otherwise.

## **PARTIES AND NOTICE**

### **Parties**

78 (1) The following are parties to a proceeding under this Part:

1. The applicant.
2. The society having jurisdiction in the matter.
3. The child's parent.
4. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1, 2 and 3 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### **Director to be added**

(2) At any stage in a proceeding under this Part, the court shall add a Director as a party on the Director's motion.

#### **Right to participate**

(3) Any person, including a foster parent, who has cared for the child continuously during the six months immediately before the hearing,

- (a) is entitled to the same notice of the proceeding as a party;
- (b) may be present at the hearing;
- (c) may be represented by a lawyer; and
- (d) may make submissions to the court,

but shall take no further part in the hearing without leave of the court.

#### **Child 12 or older**

(4) A child 12 or older who is the subject of a proceeding under this Part is entitled to receive notice of the proceeding and to be present at the hearing, unless the court is satisfied that being present at the hearing would cause the child emotional harm and orders that the child not receive notice of the proceeding and not be permitted to be present at the hearing.

#### **Child younger than 12**

(5) A child younger than 12 who is the subject of a proceeding under this Part is not entitled to receive notice of the proceeding or to be present at the hearing unless the court is satisfied that the child,

- (a) is capable of understanding the hearing; and
- (b) will not suffer emotional harm by being present at the hearing,

and orders that the child receive notice of the proceeding and be permitted to be present at the hearing.

#### **Child's participation**

(6) A child who is the applicant under subsection 110 (4) or 112 (4) (status review), receives notice of a proceeding under this Part or has legal representation in a proceeding is entitled to participate in the proceeding and to appeal under section 118 as if the child were a party.

#### **Dispensing with notice**

(7) Where the court is satisfied that the time required for notice to a person might endanger the child's health or safety, the court may dispense with notice to that person.

### **CUSTOMARY CARE**

#### **Customary care**

**79** A society shall make all reasonable efforts to pursue a plan for customary care for a First Nations, Inuk or Métis child if the child,

- (a) is in need of protection;

~~—(b) cannot remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part; and~~

- (b) cannot remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part or, where there is an order for the child's custody that is enforceable in Ontario, of the person entitled to custody under the order; and

- (c) is a member of or identifies with a band, or is a member of or identifies with a First Nations, Inuit or Métis community.



## COMMENCING CHILD PROTECTION PROCEEDINGS

### Warrants, orders, etc.

#### Application

80 (1) A society may apply to the court to determine whether a child is in need of protection.

#### Warrant to bring child to place of safety

(2) A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker's sworn information that there are reasonable and probable grounds to believe that,

(0.a) the child is younger than 16;

(a) the child is in need of protection; and

(b) a less restrictive course of action is not available or will not protect the child adequately.

#### When warrant may not be refused

(3) A justice of the peace shall not refuse to issue a warrant under subsection (2) by reason only that the child protection worker may bring the child to a place of safety under subsection (7).

#### Order to produce child or bring child to place of safety

(4) Where the court is satisfied, on a person's application upon notice to a society, that there are reasonable and probable grounds to believe that,

~~— (a) a child is in need of protection, the matter has been reported to the society, the society has not made an application under subsection (1), and no child protection worker has sought a warrant under subsection (2) or apprehended the child under subsection (7); and~~

— (a) a child is in need of protection, the matter has been reported to the society, the society has not made an application under subsection (1), and no child protection worker has sought a warrant under subsection (2) or brought the child to a place of safety under subsection (7); and

(b) the child cannot be protected adequately otherwise than by being brought before the court,

the court may order,

(c) that the person having charge of the child produce the child before the court at the time and place named in the order for a hearing under subsection 87 (1) to determine whether the child is in need of protection; or

(d) where the court is satisfied that an order under clause (c) would not protect the child adequately, that a child protection worker employed by the society bring the child to a place of safety.

#### Child's name, location not required

(5) It is not necessary, in an application under subsection (1), a warrant under subsection (2) or an order made under subsection (4), to describe the child by name or to specify the premises where the child is located.

#### Authority to enter, etc.

(6) A child protection worker authorized to bring a child to a place of safety by a warrant issued under subsection (2) or an order made under clause (4) (d) may at any time enter any premises specified in the warrant or order, by force if necessary, and may search for and remove the child.

#### Bring child to place of safety without warrant

(7) A child protection worker who believes on reasonable and probable grounds that,

~~(a) a child is in need of protection; and~~

(a.1) the child is younger than 16; and

(b) there would be a substantial risk to the child's health or safety during the time necessary to bring the matter on for a hearing under subsection 87 (1) or obtain a warrant under subsection (2),

may without a warrant bring the child to a place of safety.

#### Police assistance

(8) A child protection worker acting under this section may call for the assistance of a peace officer.

#### Consent to examine child

(9) A child protection worker acting under subsection (7) or under a warrant issued under subsection (2) or an order made under clause (4) (d) may authorize the child's medical examination where a parent's consent would otherwise be required.

**Right of entry, etc.**

(10) A child protection worker who believes on reasonable and probable grounds that a child referred to in subsection (7) is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

**Regulations re power of entry**

(11) A child protection worker authorized to enter premises under subsection (6) or (10) shall exercise the power of entry in accordance with the regulations.

**Peace officer has powers of child protection worker**

(12) Subsections (2), (6), (7), (10) and (11) apply to a peace officer as if the peace officer were a child protection worker.

**Protection from personal liability**

(13) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or for an alleged neglect or default in the execution in good faith of that duty.

**Exception, 16 and 17 year olds brought to place of safety with consent**

**80.1** (1) A child protection worker may bring a child who is 16 or 17 and who is subject to a temporary or final supervision order to a place of safety if the child consents.

**Temporary or final supervision order**

(2) In this section,

“temporary or final supervision order” means an order under clause 91 (2) (b) or (c), paragraph 1 or 4 of subsection 98 (1), subsection 110 (8) or 112 (10) or clause 113 (1) (a).

**SPECIAL CASES OF BRINGING CHILDREN TO A PLACE OF SAFETY****Bringing children who are removed from or leave care to place of safety****With warrant**

**81** (1) A justice of the peace may issue a warrant authorizing a child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of a child protection worker's sworn information that,

—(a) ~~the child,~~

(a) the child is actually or apparently younger than 16, and,

(i) has left or been removed from a society's lawful care and custody without its consent, or

(ii) is the subject of an extra-provincial child protection order and has left or been removed from the lawful care and custody of the child welfare authority or other person named in the order; and

(b) there are reasonable and probable grounds to believe that there is no course of action available other than bringing the child to a place of safety that would adequately protect the child.

**When warrant may not be refused**

(2) A justice of the peace shall not refuse to issue a warrant to a person under subsection (1) by reason only that the person may bring the child to a place of safety under subsection (4).

**No need to specify premises**

(3) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located.

**Without warrant**

(4) A peace officer or child protection worker may without a warrant bring the child to a place of safety if the peace officer or child protection worker believes on reasonable and probable grounds that,

—(a) ~~a child,~~

(a) the child is actually or apparently younger than 16, and,

(i) has left or been removed from a society's lawful care and custody without its consent, or

(ii) is the subject of an extra-provincial child protection order and has left or been removed from the lawful care and custody of the child welfare authority or other person named in the order; and

(b) there would be a substantial risk to the child's health or safety during the time necessary to obtain a warrant under subsection (1).

### **Apprehension of child younger than 12**

~~82 (1) A peace officer who believes on reasonable and probable grounds that a child actually or apparently younger than 12 has committed an act in respect of which a person 12 or older could be found guilty of an offence may apprehend the child without a warrant and on doing so,~~

- ~~— (a) shall return the child to the child's parent or other person having charge of the child as soon as practicable; or~~
- ~~— (b) where it is not possible to return the child to the parent or other person within a reasonable time, shall take the child to a place of safety to be detained there until the child can be returned to the parent or other person.~~

### **Bringing child younger than 12 home or to place of safety**

82 (1) A peace officer who believes on reasonable and probable grounds that a child actually or apparently younger than 12 has committed an act in respect of which a person 12 or older could be found guilty of an offence may bring the child to a place of safety without a warrant and on doing so,

- (a) shall return the child to the child's parent or other person having charge of the child as soon as practicable; or
- (b) where it is not possible to return the child to the parent or other person within a reasonable time, shall bring the child to a place of safety until the child can be returned to the parent or other person.

### **Notice to parent, etc.**

(2) The person in charge of a place of safety in which a child is detained under subsection (1) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person.

### **Where child not returned to parent, etc., within 12 hours**

~~(3) Where a child detained in a place of safety under subsection (1) cannot be returned to the child's parent or other person having charge of the child within 12 hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 80 (7) and not apprehended under subsection (1).~~

### **Where child not returned to parent, etc., within 12 hours**

(3) Where a child brought to a place of safety under subsection (1) cannot be returned to the child's parent or other person having charge of the child within 12 hours of being brought to the place of safety, the child is deemed to have been brought to a place of safety under subsection 80 (7) and not under subsection (1).

### **Children who withdraw from parent's care**

#### **Warrant to apprehend child**

~~83 (1) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to apprehend a child if the justice of the peace is satisfied on the basis of the sworn information of a person that,~~

- ~~— (a) the child is younger than 16;~~
- ~~— (b) the child has withdrawn from the person's care and control without the person's consent; and~~
- ~~— (c) the person believes on reasonable and probable grounds that the child's health or safety may be at risk if the child is not apprehended.~~

### **Child to be returned or taken to a place of safety**

~~(2) A person who apprehends a child under subsection (1) shall return the child to the person with care and control of the child as soon as practicable and where it is not possible to return the child to that person within a reasonable time, take the child to a place of safety.~~

### **Notice to person with care, custody or control**

~~(3) The person in charge of a place of safety to which a child is taken under subsection (2) shall make reasonable efforts to notify the person with care and control of the child that the child is in the place of safety so that the child may be returned to that person.~~

### **Where child not returned within 12 hours**

(4) Where a child taken to a place of safety under subsection (2) cannot be returned to the person with care and control of the child within 12 hours of being taken to the place of safety, the child shall be dealt with as if the child had been taken to a place of safety under subsection 80 (2) and not apprehended under subsection (1).

### **Children who withdraw from parent's care**

#### **Warrant to bring child to a place of safety**

83 (1) A justice of the peace may issue a warrant authorizing a peace officer or child protection worker to bring a child to a place of safety if the justice of the peace is satisfied on the basis of the sworn information of a person that,



- (a) the child is younger than 16;
- (b) the child has withdrawn from the person's care and control without the person's consent; and
- (c) the person believes on reasonable and probable grounds that the child's health or safety may be at risk if the child is not brought to a place of safety.

#### **Child to be returned or brought to a place of safety**

(2) A person acting under a warrant issued under subsection (1) shall return the child to the person with care and control of the child as soon as practicable and where it is not possible to return the child to that person within a reasonable time, bring the child to a place of safety.

#### **Notice to person with care, custody or control**

(3) The person in charge of a place of safety to which a child is brought under subsection (2) shall make reasonable efforts to notify the person with care and control of the child that the child is in the place of safety so that the child may be returned to that person.

#### **Where child not returned within 12 hours**

(4) Where a child brought to a place of safety under subsection (2) cannot be returned to the person with care and control of the child within 12 hours of being brought to the place of safety, the child is deemed to have been brought to a place of safety under subsection 80 (2) and not under subsection (1).

#### **Where custody enforcement proceedings more appropriate**

(5) A justice of the peace shall not issue a warrant under subsection (1) in respect of a child who has withdrawn from the care and control of a person where a proceeding under section 36 of the *Children's Law Reform Act* would be more appropriate.

#### **No need to specify premises**

(6) It is not necessary in a warrant under subsection (1) to specify the premises where the child is located.

#### **Child protection proceedings**

~~(7) Where a peace officer or child protection worker believes on reasonable and probable grounds that a child apprehended under this section is in need of protection and there may be a substantial risk to the health or safety of the child if the child were returned to the person with the care and control of the child,~~

- ~~— (a) the peace officer or child protection worker may take the child to a place of safety under subsection 80 (7); or~~
- ~~— (b) where the child has been taken to a place of safety under subsection (4), the child shall be dealt with as if the child had been taken there under subsection 80 (7).~~

#### **Child protection proceedings**

(7) Where a peace officer or child protection worker believes on reasonable and probable grounds that a child brought to a place of safety under this section is in need of protection and there may be a substantial risk to the health or safety of the child if the child were returned to the person with care and control of the child,

- (a) the peace officer or child protection worker may bring the child to a place of safety under subsection 80 (7); or
- (b) where the child has been brought to a place of safety under subsection (4), the child is deemed to have been brought there under subsection 80 (7).

#### **Authority to enter, etc.**

**84 (1)** A person authorized to bring a child to a place of safety by a warrant issued under subsection 81 (1) or 83 (1) may at any time enter any premises specified in the warrant, by force, if necessary, and may search for and remove the child

#### **Right of entry, etc.**

(2) A person authorized under subsection 81 (4) or 82 (1) who believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

#### **Regulations re power of entry**

(3) A person authorized to enter premises under this section shall exercise the power of entry in accordance with the regulations.

#### **Police assistance**

(4) A child protection worker acting under section 81 or 83 may call for the assistance of a peace officer.

**Consent to examine child**

~~(5) A child protection worker who deals with a child under subsection 82 (3) or 83 (4) as if the child had been taken to a place of safety may authorize the child's medical examination where a parent's consent would be otherwise required.~~

**Consent to examine child**

(5) Where subsection 82 (3) or 83 (4) applies to a child brought to a place of safety, a child protection worker may authorize the child's medical examination where a parent's consent would be otherwise required.

**Protection from personal liability**

(6) No action shall be instituted against a peace officer or child protection worker for any act done in good faith in the execution or intended execution of that person's duty under this section or section 81, 82 or 83 or for an alleged neglect or default in the execution in good faith of that duty.

**HEARINGS AND ORDERS****Rules re hearings****Definition**

85 (1) In this section,

"media" means the press, radio and television media.

**Application**

(2) This section applies to hearings held under this Part, except hearings under section 131 (child abuse register).

**Hearings separate from criminal proceedings**

(3) A hearing shall be held separately from hearings in criminal proceedings.

**Hearings private unless court orders otherwise**

(4) A hearing shall be held in the absence of the public, subject to subsection (5), unless the court orders that the hearing be held in public after considering,

- (a) the wishes and interests of the parties; and
- (b) whether the presence of the public would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding.

**Media representatives may attend**

(5) Media representatives chosen in accordance with subsection (6) may be present at a hearing that is held in the absence of the public, unless the court makes an order excluding them under subsection (7).

**Selection of media representatives**

(6) The media representatives who may be present at a hearing that is held in the absence of the public shall be chosen as follows:

- 1. The media representatives in attendance shall choose not more than two persons from among themselves.
- 2. Where the media representatives in attendance are unable to agree on a choice of persons, the court may choose not more than two media representatives who may be present at the hearing.
- 3. The court may permit additional media representatives to be present at the hearing.

**Order excluding media representatives or prohibiting publication**

(7) Where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding, the court may make an order,

- (a) excluding a particular media representative from all or part of a hearing;
- (b) excluding all media representatives from all or a part of a hearing; or
- (c) prohibiting the publication of a report of the hearing or a specified part of the hearing.

**Prohibition re identifying child**

(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

### **Prohibition re identifying person charged**

(9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

### **Transcript**

(10) No person except a party or a party's lawyer shall be given a copy of a transcript of the hearing, unless the court orders otherwise.

### **Time in place of safety limited**

**86** As soon as practicable, but in any event within five days after a child is brought to a place of safety under section 80, subclause 81 (1) (a) (ii) or subsection 133 (5),

- (a) the matter shall be brought before a court for a hearing under subsection 87 (1) (child protection hearing);
- (b) the child shall be returned to the person who last had charge of the child or, where there is an order for the child's custody that is enforceable in Ontario, to the person entitled to custody under the order;
- (c) if the child is the subject of an extra-provincial child protection order, the child shall be returned to the child welfare authority or other person named in the order;
- (d) a temporary care agreement shall be made under subsection 74 (1); or
- (e) an agreement shall be made under section 76 (agreements with 16 and 17 year olds).

### **Time in place of safety limited, 16 or 17 year old**

**86.1** As soon as practicable, but in any event within five days after a child who is 16 or 17 is brought to a place of safety with the child's consent under section 80.1,

- (a) the matter shall be brought before a court for a hearing under subsection 87 (1); or
- (b) the child shall be returned to the person entitled to custody of the child under an order made under this Part.

### **Child protection hearing**

**87** (1) Where an application is made under subsection 80 (1) or a matter is brought before the court to determine whether the child is in need of protection, the court shall hold a hearing to determine the issue and make an order under section 98.

### **Child's name, age, etc.**

(2) As soon as practicable, and in any event before determining whether a child is in need of protection, the court shall determine,

- (a) the child's name and age;
- (b) whether the child is a First Nations, Inuk or Métis child and, if so, the child's bands and First Nations, Inuit or Métis communities; and
- (c) where the child was brought to a place of safety before the hearing, the location of the place from which the child was removed.

### **Territorial jurisdiction**

**88** (1) In this section,

"territorial jurisdiction" means a society's territorial jurisdiction under subsection 33 (1).

### **Place of hearing**

(2) A hearing under this Part with respect to a child shall be held in the territorial jurisdiction in which the child ordinarily resides, except that,

- (a) where the child is brought to a place of safety before the hearing, the hearing shall be held in the territorial jurisdiction in which the place from which the child was removed is located;
- (b) where the child is in interim society care under an order made under paragraph 2 or 4 of subsection 98 (1) or extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), the hearing shall be held in the society's territorial jurisdiction; and
- (c) where the child is the subject of an order for society supervision under paragraph 1 of subsection 98 (1) or clause 113 (1) (a), the hearing may be held in the society's territorial jurisdiction or in the territorial jurisdiction in which the parent or other person with whom the child is placed resides.



### **Transfer of proceeding**

(3) Where the court is satisfied at any stage of a proceeding under this Part that there is a preponderance of convenience in favour of conducting it in another territorial jurisdiction, the court may order that the proceeding be transferred to that other territorial jurisdiction and be continued as if it had been commenced there.

### **Orders affecting society**

(4) The court shall not make an order placing a child in the care or under the supervision of a society unless the place where the court sits is within the society's territorial jurisdiction.

### **Power of court**

**89** The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been made in a proceeding under the *Family Law Act*.

### **Evidence**

#### **Past conduct toward children**

**90** (1) Despite anything in the *Evidence Act*, in any proceeding under this Part,

- (a) the court may consider the past conduct of a person toward any child if that person is caring for or has access to or may care for or have access to a child who is the subject of the proceeding; and
- (b) any oral or written statement or report that the court considers relevant to the proceeding, including a transcript, exhibit or finding or the reasons for a decision in an earlier civil or criminal proceeding, is admissible into evidence.

#### **Evidence re disposition and finding**

(2) In a hearing under subsection 87 (1), evidence relating only to the disposition of the matter shall not be considered in determining if the child is in need of protection.

### **Adjournments**

**91** (1) The court shall not adjourn a hearing for more than 30 days,

- (a) unless all the parties present and the person who will be caring for the child during the adjournment consent; or
- (b) if the court is aware that a party who is not present at the hearing objects to the longer adjournment.

### **Custody during adjournment**

(2) Where a hearing is adjourned, the court shall make a temporary order for care and custody providing that the child,

- (a) remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part;
- (b) remain in or be returned to the care and custody of the person referred to in clause (a), subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate;
- (c) be placed in the care and custody of a person other than the person referred to in clause (a), with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate; or
- (d) remain or be placed in the care and custody of the society, but not be placed in a place of temporary detention, of open or of secure custody.

### **Where child is subject to extra-provincial order**

(3) Where a court makes an order under clause (2) (d) in the case of a child who is the subject of an extra-provincial child protection order the society may, during the period of the adjournment, return the child to the care and custody of the child welfare authority or other person named in the order.

### **Criteria**

(4) The court shall not make an order under clause (2) (c) or (d) unless the court is satisfied that there are reasonable grounds to believe that there is a risk that the child is likely to suffer harm and that the child cannot be protected adequately by an order under clause (2) (a) or (b).

### **Placement with relative, etc.**

(5) Before making a temporary order for care and custody under clause (2) (d), the court shall consider whether it is in the child's best interests to make an order under clause (2) (c) to place the child in the care and custody of a person who is a relative of the child or a member of the child's extended family or community.

### **Terms and conditions in order**

(6) A temporary order for care and custody of a child under clause (2) (b) or (c) may impose,

- (a) reasonable terms and conditions relating to the child's care and supervision;
- (b) reasonable terms and conditions on the child's parent, the person who will have care and custody of the child under the order, the child and any other person, other than a foster parent, who is putting forward a plan or who would participate in a plan for care and custody of or access to the child; and
- (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or to purchase any goods or services.

#### **Application of s. 107**

(7) Where the court makes an order under clause (2) (d), section 107 (child in interim society care) applies with necessary modifications.

#### **Access**

(8) An order made under clause (2) (c) or (d) may contain provisions regarding any person's right of access to the child on such terms and conditions as the court considers appropriate.

#### **Power to vary**

(9) The court may at any time vary or terminate an order made under subsection (2).

#### **Evidence on adjournments**

(10) For the purpose of this section, the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

#### **Child's views and wishes**

(11) Before making an order under subsection (2), the court shall take into consideration the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained.

#### **Use of prescribed methods of alternative dispute resolution**

92 At any time during a proceeding under this Part, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceeding to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to any matter that is relevant to the proceeding.

#### **Delay: court to fix date**

93 Where an application is made under subsection 80 (1) or a matter is brought before the court to determine whether a child is in need of protection and the determination has not been made within three months after the commencement of the proceeding, the court,

- (a) shall by order fix a date for the hearing of the application, and the date may be the earliest date that is compatible with the just disposition of the application; and
- (b) may give such directions and make such orders with respect to the proceeding as are just.

#### **Reasons, etc.**

94 (1) Where the court makes an order under this Part, the court shall give,

- (a) a statement of any terms or conditions imposed on the order;
- (b) a statement of every plan for the child's care proposed to the court;
- (c) a statement of the plan for the child's care that the court is applying in its decision; and
- (d) reasons for its decision, including,
  - (i) a brief statement of the evidence on which the court bases its decision, and
  - (ii) where the order has the effect of removing or keeping the child from the care of the person who had charge of the child immediately before intervention under this Part, a statement of the reasons why the child cannot be adequately protected while in the person's care.

#### **No requirement to identify person or place**

(2) Clause (1) (b) does not require the court to identify a person with whom or a place where it is proposed that a child be placed for care and supervision.

### **ASSESSMENTS**

#### **Order for assessment**

95 (1) In the course of a proceeding under this Part, the court may order that one or more of the following persons undergo an assessment within a specified time by a person appointed in accordance with subsections (3) and (4):

1. The child.
2. A parent of the child.
3. Any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child.

#### **Criteria for ordering assessment**

- (2) An assessment may be ordered if the court is satisfied that,
- (a) an assessment of one or more of the persons specified in subsection (1) is necessary for the court to make a determination under this Part; and
  - (b) the evidence sought from an assessment is not otherwise available to the court.

#### **Assessor selected by parties**

- (3) An order under subsection (1) shall specify a time within which the parties to the proceeding may select a person to perform the assessment and submit the name of the selected person to the court.

#### **Appointment of person selected by parties**

- (4) The court shall appoint the person selected by the parties to perform the assessment if the court is satisfied that the person meets the following criteria:
1. The person is qualified to perform medical, emotional, developmental, psychological, educational or social assessments.
  2. The person has consented to perform the assessment.

#### **Appointment of a person not selected by parties**

- (5) If the court is of the opinion that the person selected by the parties under subsection (3) does not meet the criteria set out in subsection (4), the court shall select and appoint another person who does meet the criteria.

#### **Regulations**

- (6) An order under subsection (1) and the assessment required by that order shall comply with such requirements as may be prescribed.

#### **Report**

- (7) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than 30 days, unless the court is of the opinion that a longer assessment period is necessary.

#### **Copies of report**

- (8) At least seven days before the court considers the report at a hearing, the court or, where the assessment was requested by a party, that party, shall provide a copy of the report to,
- (a) the person assessed, subject to subsections (9) and (10);
  - (b) the child's lawyer or agent;
  - (c) a parent appearing at the hearing, or the parent's lawyer;
  - (d) the society caring for or supervising the child;
  - (e) a Director, where the Director requests a copy;
  - (f) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b) (c), (d) and (e) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities; and
  - (g) any other person who, in the opinion of the court, should receive a copy of the report for the purposes of the case.

#### **Child younger than 12**

- (9) Where the person assessed is a child younger than 12, the child shall not receive a copy of the report unless the court considers it desirable that the child receive a copy of the report.

#### **Child 12 or older**

- (10) Where the person assessed is a child 12 or older, the child shall receive a copy of the report, except that where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm, the court may withhold all or part of the report from the child.



## Conflict

(11) Subsections (9) and (10) prevail despite anything in the *Personal Health Information Protection Act, 2004*.

## Assessment is evidence

(12) The report of an assessment ordered under subsection (1) is evidence and is part of the court record of the proceeding.

## Inference from refusal

(13) The court may draw any inference it considers reasonable from a person's refusal to undergo an assessment ordered under subsection (1).

## Report inadmissible

(14) The report of an assessment ordered under subsection (1) is not admissible into evidence in any other proceeding except,

- (a) a proceeding under this Part, including an appeal under section 118;
- (b) a proceeding referred to in section 134;
- (c) a proceeding under Part VIII (Adoption and Adoption Licensing) respecting an application to make, vary or terminate an openness order; or
- (d) a proceeding under the *Coroners Act*,

without the consent of the person or persons assessed.

## Consent order: special requirements

96 Where a child is brought before the court on consent as described in clause 73 (2) (n), the court shall, before making an order under section 98 or 99 that would remove the child from the parent's care and custody,

- (a) ask whether,
  - (i) the society has offered the parent and child services that would enable the child to remain with the parent, and
  - (ii) the parent and, where the child is 12 or older, the child, has consulted independent legal counsel in connection with the consent; and
- (b) be satisfied that,
  - (i) the parent and, where the child is 12 or older, the child, understands the nature and consequences of the consent,
  - (ii) every consent is voluntary, and
  - (iii) the parent and, where the child is 12 or older, the child, consents to the order being sought.

## Society's plan for child

97 The court shall, before making an order under section 98, 99, 111 or 113, obtain and consider a plan for the child's care prepared in writing by the society and including,

- (a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found to be in need of protection;
- (b) a statement of the criteria by which the society will determine when its care or supervision is no longer required;
- (c) an estimate of the time required to achieve the purpose of the society's intervention;
- (d) where the society proposes to remove or has removed the child from a person's care,
  - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so, and
  - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person;
- (e) where the society proposes to remove or has removed the child from a person's care permanently, a description of the arrangements made or being made for the child's long-term stable placement; and
- (f) a description of the arrangements made or being made to recognize the importance of the child's culture and to preserve the child's heritage, traditions and cultural identity.

## Order where child in need of protection

98 (1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders or an order under section 99, in the child's best interests:

**Supervision order**

1. That the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months.

**Interim society care**

2. That the child be placed in interim society care and custody for a specified period not exceeding 12 months.

**Extended society care**

3. That the child be placed in extended society care until the order is terminated under section 113 or expires under section 120.

**Consecutive orders of interim society care and supervision**

4. That the child be placed in interim society care and custody under paragraph 2 for a specified period and then be returned to a parent or another person under paragraph 1, for a period or periods not exceeding a total of 12 months.

**Court to inquire**

(2) In determining which order to make under subsection (1) or section 99, the court shall ask the parties what efforts ~~the society or another agency or person~~ the society or another person or entity has made to assist the child before intervention under this Part.

**Less disruptive alternatives preferred**

(3) The court shall not make an order removing the child from the care of the person who had charge of the child immediately before intervention under this Part unless the court is satisfied that alternatives that are less disruptive to the child, including non-residential care and the assistance referred to in subsection (2), would be inadequate to protect the child.

**Community placement to be considered**

(4) Where the court decides that it is necessary to remove the child from the care of the person who had charge of the child immediately before intervention under this Part, the court shall, before making an order under paragraph 2 or 3 of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family under paragraph 1 of subsection (1) with the consent of the relative or other person.

**First Nations, Inuk or Métis child**

(5) Where the child referred to in subsection (4) is a First Nations, Inuk or Métis child, unless there is a substantial reason for placing the child elsewhere, the court shall place the child with a member of the child's extended family if it is possible or, if it is not possible,

- (a) in the case of a First Nations child, another First Nations family;
- (b) in the case of an Inuk child, another Inuit family; or
- (c) in the case of a Métis child, another Métis family.

**Further hearing with notice for orders for interim or extended society care**

(6) When the court has dispensed with notice to a person under subsection 78 (7), the court shall not make an order for interim society care under paragraph 2 of subsection (1) for a period exceeding 30 days or an order for extended society care under paragraph 3 of subsection (1) until a further hearing under subsection 87 (1) has been held upon notice to that person.

**Terms and conditions of supervision order**

(7) If the court makes a supervision order under paragraph 1 of subsection (1), the court may impose,

- (a) reasonable terms and conditions relating to the child's care and supervision;
- (b) reasonable terms and conditions on,
  - (i) the child's parent,
  - (ii) the person who will have care and custody of the child under the order,
  - (iii) the child, and
  - (iv) any other person, other than a foster parent, who is putting forward or would participate in a plan for the care and custody of or access to the child; and
- (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or purchase any goods or services.

### **Order for child to remain or return to person who had charge before intervention**

(8) Where the court finds that a child is in need of protection but is not satisfied that a court order is necessary to protect the child in the future, the court shall order that the child remain with or be returned to the person who had charge of the child immediately before intervention under this Part.

### **No order where child not subject to parental control**

(9) Where the court finds that a child who was not subject to parental control immediately before intervention under this Part by virtue of having withdrawn from parental control or who withdraws from parental control after intervention under this Part is in need of protection, but is not satisfied that a court order is necessary to protect the child in the future, the court shall make no order in respect of the child.

### **Custody order**

99 (1) Subject to subsection (6), if a court finds that an order under this section instead of an order under subsection 98 (1) would be in a child's best interests, the court may make an order granting custody of the child to one or more persons, other than a foster parent of the child, with the consent of the person or persons.

### **Deemed to be order under s. 28 *Children's Law Reform Act***

(2) An order made under subsection (1) and any access order under section 101 that is made at the same time as the order under subsection (1) is deemed to be made under section 28 of the *Children's Law Reform Act* and the court,

- (a) may make any order under subsection (1) that the court may make under section 28 of that Act; and
- (b) may give any directions that it may give under section 34 of that Act.

### **Restraining order**

(3) When making an order under subsection (1), the court may, without a separate application, make a restraining order in accordance with section 35 of the *Children's Law Reform Act*.

### **Deemed to be final order under s. 35 *Children's Law Reform Act***

(4) An order under subsection (3) is deemed to be a final order made under section 35 of the *Children's Law Reform Act*, and shall be treated for all purposes as if it had been made under that section.

### **Appeal under s. 118**

(5) Despite subsections (2) and (4), an order under subsection (1) or (3) and any access order under section 101 that is made at the same time as an order under subsection (1) are orders under this Part for the purposes of appealing from the orders under section 118.

### **Conflict of laws**

(6) No order shall be made under this section if,

- (a) an order granting custody of the child has been made under the *Divorce Act* (Canada); or
- (b) in the case of an order that would be made by the Ontario Court of Justice, the order would conflict with an order made by a superior court.

### **Application of s. 98 (3)**

(7) Subsection 98 (3) applies for the purposes of this section.

### **Effect of custody proceedings**

100 If, under this Part, a proceeding is commenced or an order for the care, custody or supervision of a child is made, any proceeding respecting custody of or access to the same child under the *Children's Law Reform Act* is stayed except by leave of the court in the proceeding under that Act.

## **ACCESS**

### **Access order**

101 (1) The court may, in the child's best interests,

- (a) when making an order under this Part; or
- (b) upon an application under subsection (2),

make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate.



**Who may apply**

(2) Where a child is in a society's care and custody or supervision, the following may apply to the court at any time for an order under subsection (1):

1. The child.

~~2. Any other person, including, in the case of a First Nations, Inuk or Métis child, a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.~~

2. Any other person, including a sibling of the child and, in the case of a First Nations, Inuk or Métis child, a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

3. The society.

**Notice**

(3) An applicant referred to in paragraph 2 of subsection (2) shall give notice of the application to the society.

**Society to give notice of application**

(4) A society making or receiving an application under subsection (2) shall give notice of the application to,

(a) the child, subject to subsections 78 (4) and (5) (notice to child);

(b) the child's parent;

(c) the person caring for the child at the time of the application; and

(d) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b) and (c) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

**Child older than 16**

(5) No order respecting access to a person 16 or older shall be made under subsection (1) without the person's consent.

**Six-month period**

(6) No application shall be made under subsection (2) by a person other than a society within six months of,

(a) the making of an order under section 98;

(b) the disposition of a previous application by the same person under subsection (2);

(c) the disposition of an application under section 110 or 112; or

(d) the final disposition or abandonment of an appeal from an order referred to in clause (a), (b) or (c),

whichever is later.

**No application where child placed for adoption**

(7) No person or society shall make an application under subsection (2) where the child,

(a) is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c);

(b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VIII (Adoption and Adoption Licensing); and

(c) still resides in that person's home.

**Access: where child removed from person in charge**

**102** (1) Where an order is made under paragraph 1 or 2 of subsection 98 (1) removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact with the person would not be in the child's best interests.

**Access after custody order under s. 99**

(2) If a custody order is made under section 99 removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact will not be in the child's best interests.

**Access after supervision order or custody order under s. 113 (1)**

(3) If an order is made for supervision under clause 113 (1) (a) or for custody under clause 113 (1) (b), the court shall make an order for access by every person who had access before the application for the order was made under section 112, unless the court is satisfied that continued contact will not be in the child's best interests.

### **Existing access order terminated if order made for extended society care**

(4) Where the court makes an order that a child be in extended society care under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), any order for access made under this Part with respect to the child is terminated.

### **~~When court may order access to child in extended society care~~**

~~(5) A court shall not make or vary an access order under section 101 with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) unless the court is satisfied that,~~

~~—(a) the relationship between the person and the child is beneficial and meaningful to the child; and~~

~~—(b) the ordered access will not impair the child's future opportunities for adoption.~~

### **When court may order access to child in extended society care**

(5) A court shall not make or vary an access order under section 101 with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) unless the court is satisfied that the order or variation would be in the child's best interests.

### **Additional considerations for best interests test**

(5.1) The court shall consider, as part of its determination of whether an order or variation would be in the child's best interests under subsection (5),

(a) whether the relationship between the person and the child is beneficial and meaningful to the child; and

(b) if the court considers it relevant, whether the ordered access will impair the child's future opportunities for adoption.

### **Court to specify access holders and access recipients**

(6) Where a court makes or varies an access order under section 101 with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), the court shall specify,

(a) every person who has been granted a right of access; and

(b) every person with respect to whom access has been granted.

### **~~When court to terminate access to child in extended society care~~**

~~(7) The court shall terminate an access order with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) if,~~

~~—(a) the order is no longer in the best interests of the child; or~~

~~—(b) the court is no longer satisfied that the requirements set out in clauses (5) (a) and (b) are satisfied.~~

### **When court to terminate access to child in extended society care**

(7) The court shall terminate an access order with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) if the order is no longer in the best interests of the child as determined under subsection (5.1).

### **Society may permit contact or communication**

(8) If a society believes that contact or communication between a person and a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) is in the best interests of the child and no openness order under Part VIII (Adoption and Adoption Licensing) or access order is in effect with respect to the person and the child, the society may permit contact or communication between the person and the child.

### **Review of access order made concurrently with custody order**

**103** No order for access under section 101 is subject to review under this Act if it is made at the same time as a custody order under section 99, but it may be the subject of an application under section 21 of the *Children's Law Reform Act* and the provisions of that Act apply as if the order had been made under that Act.

### **Restriction on access order**

**104** If a society has applied to a court for an order under this Act respecting access to a child by a parent of the child and the court makes the order, the court shall specify in the order the supervision to which the access is subject if, at the time of making the order, the parent has been charged with or convicted of an offence under the *Criminal Code* (Canada) involving an act of violence against the child or the other parent of the child, unless the court considers it appropriate not to make the access subject to such supervision.

## **PAYMENT ORDERS**

### **Order for payment by parent**

**105** (1) Where the court places a child in the care of,

- (a) a society; or
- (b) a person other than the child's parent, subject to a society's supervision,

the court may order a parent or a parent's estate to pay the society a specified amount at specified intervals for each day the child is in the society's care or supervision.

### **Criteria**

(2) In making an order under subsection (1), the court shall consider those of the following circumstances of the case that the court considers relevant:

1. The assets and means of the child and of the parent or the parent's estate.
2. The child's capacity to provide for their own support.
3. The capacity of the parent or the parent's estate to provide support.
4. The child's and the parent's age and physical and mental health.
5. The child's mental, emotional and physical needs.
6. Any legal obligation of the parent or the parent's estate to provide support for another person.
7. The child's aptitude for and reasonable prospects of obtaining an education.
8. Any legal right of the child to support from another source, other than out of public money.

### **Order ends at 18**

(3) No order made under subsection (1) shall extend beyond the day on which the child turns 18.

### **Power to vary**

(4) The court may vary, suspend or terminate an order made under subsection (1) where the court is satisfied that the circumstances of the child or parent have changed.

### **Collection by municipality**

(5) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality, on the society's behalf, of the amounts ordered to be paid by a parent under subsection (1).

### **Enforcement**

(6) An order made against a parent under subsection (1) may be enforced as if it were an order for support made under Part III of the *Family Law Act*.

## **INTERIM AND EXTENDED SOCIETY CARE**

### **Placement of children**

**106** (1) This section applies where a child is in interim society care under an order made under paragraph 2 of subsection 98 (1) or extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c).

#### **Placement**

(2) The society having care of a child shall choose a residential placement for the child that,

- (a) represents the least restrictive alternative for the child;
- (b) where possible, respects the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, creed, sex, sexual orientation, gender identity and gender expression;
- (c) where possible, respects the child's cultural and linguistic heritage;
- (d) in the case of a First Nations, Inuk or Métis child, is with, if possible, a member of the child's extended family or, if that is not possible,
  - (i) in the case of a First Nations child, another First Nations family,
  - (ii) in the case of an Inuk child, another Inuit family, or
  - (iii) in the case of a Métis child, another Métis family; and
- (e) takes into account the child's views and wishes, given due weight in accordance with the child's age and maturity, and the views and wishes of any parent who is entitled to access to the child.

#### **Education**

(3) The society having care of a child shall ensure that the child receives an education that corresponds to the child's aptitudes and abilities.



### **Placement outside or removal from Ontario**

(4) The society having care of a child shall not place the child outside Ontario or permit a person to remove the child from Ontario permanently unless a Director is satisfied that extraordinary circumstances justify the placement or removal.

### **Rights of child, parent and foster parent**

(5) The society having care of a child shall ensure that,

- (a) the child is afforded all the rights referred to in Part II (Children's and Young Persons' Rights); and
- (b) the wishes of any parent who is entitled to access to the child and, where the child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), of any foster parent with whom the child has lived continuously for two years are taken into account in the society's major decisions concerning the child.

### **Change of placement**

(6) The society having care of a child may remove the child from a foster home or other residential placement where, in the opinion of a Director or local director, it is in the child's best interests to do so.

### **Notice of proposed removal**

(7) If a child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) and has lived continuously with a foster parent for two years and a society proposes to remove the child from the foster parent under subsection (6), the society shall,

- (a) give the foster parent at least 10 days notice in writing of the proposed removal and of the foster parent's right to apply for a review under subsection (8); and
- (b) in the case of a First Nations, Inuk or Métis child, give the notice required by clause (a), and
  - (i) give at least 10 days notice in writing of the proposed removal to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities, and
  - (ii) after the notice is given under subclause (i), consult with representatives chosen by the bands and communities relating to the plan of care for the child.

### **Application for review**

(8) A foster parent who receives a notice under clause (7) (a) may, within 10 days after receiving the notice, apply to the Board in accordance with the regulations for a review of the proposed removal.

### **Board hearing**

(9) Upon receipt of an application by a foster parent for a review of a proposed removal, the Board shall hold a hearing under this section.

### **First Nations, Inuk or Métis child**

(10) Upon receipt of an application for review of a proposed removal of a First Nations, Inuk or Métis child, the Board shall also give notice of receipt of the application and of the date of the hearing to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **Practices and procedures**

(11) The *Statutory Powers Procedure Act* applies to a hearing under this section and the Board shall comply with such additional practices and procedures as may be prescribed.

### **Composition of Board**

(12) At a hearing under this section, the Board shall be composed of members with the prescribed qualifications and prescribed experience.

### **Parties**

(13) The following persons are parties to a hearing under this section:

- 1. The applicant.
- 2. The society.
- 3. If the child is a First Nations, Inuk or Métis child, the persons described in paragraphs 1 and 2 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
- 4. Any person that the Board adds under subsection (14).

### **Additional parties**

(14) The Board may add a person as a party to a review if, in the Board's opinion, it is necessary to do so in order to decide all the issues in the review.

### **Board decision**

(15) The Board shall, in accordance with its determination of which action is in the best interests of the child, confirm the proposal to remove the child or direct the society not to carry out the proposed removal, and shall give written reasons for its decision.

### **No removal before decision**

(16) Subject to subsection (17), the society shall not carry out the proposed removal of the child unless,

- (a) the time for applying for a review of the proposed removal under subsection (8) has expired and an application is not made; or
- (b) if an application for a review of the proposed removal is made under subsection (8), the Board has confirmed the proposed removal under subsection (15).

### **Where child at risk**

(17) A society may remove the child from the foster home before the expiry of the time for applying for a review under subsection (8) or at any time after the application for a review is made if, in the opinion of a local director, there is a risk that the child is likely to suffer harm during the time necessary for a review by the Board.

### **Review of certain placements**

(18) Sections 62, 63, 64 and 65 (review by residential placement advisory committee, further review by the Board) apply with necessary modifications to a residential placement made by a society under this section.

### **Definition**

(19) In this section,

"residential placement" has the same meaning as in section 61.

### **Child in interim society care**

**107** (1) Where a child is in interim society care under an order made under paragraph 2 of subsection 98 (1), the society has the rights and responsibilities of a parent for the purpose of the child's care, custody and control.

### **Consent to treatment — society or parent may act**

(2) Where a child is in interim society care under an order made under paragraph 2 of subsection 98 (1), and the child is found incapable of consenting to treatment under the *Health Care Consent Act, 1996*, the society may act in the place of a parent in providing consent to treatment on behalf of the child, unless the court orders that the parent shall retain the authority under that Act to give or refuse consent to treatment on behalf of the incapable child.

### **Exception**

(3) The court shall not make an order under subsection (2) where failure to consent to necessary treatment was a ground for finding that the child was in need of protection.

### **Court may authorize society to act re consent to treatment**

(4) Where a parent referred to in an order made under subsection (2) refuses or is unavailable or unable to consent to treatment for the incapable child and the court is satisfied that the treatment would be in the child's best interests, the court may authorize the society to act in the place of a parent in providing consent to the treatment on the child's behalf.

### **Consent to child's marriage**

(5) Where a child is in interim society care under an order made under paragraph 2 of subsection 98 (1), the child's parent retains any right that the parent may have under the *Marriage Act* to give or refuse consent to the child's marriage.

### **Child in extended society care**

**108** (1) Where a child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), the Crown has the rights and responsibilities of a parent for the purpose of the child's care, custody and control, and the Crown's powers, duties and obligations in respect of the child, except those assigned to a Director by this Act or the regulations, shall be exercised and performed by the society caring for the child.

### **Consent to treatment — society may act**

(2) Where a child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), and the child is found incapable of consenting to treatment under the *Health Care Consent Act, 1996*, the society may act in the place of a parent in providing consent to treatment on behalf of the child.

### **Society's obligation to pursue family relationship for child in extended society care**

**109** Where a child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), the society shall make all reasonable efforts to assist the child to develop a positive, secure and enduring relationship within a family through one of the following:

1. An adoption.
2. A custody order under subsection 113 (1).
3. In the case of a First Nations, Inuk or Métis child,
  - i. a plan for customary care,
  - ii. an adoption, or
  - iii. a custody order under subsection 113 (1).

### **REVIEW**

#### **Status review**

**110** (1) This section applies where a child is the subject of an order made under paragraph 1 or 4 of subsection 98 (1) for society supervision or under paragraph 2 of subsection 98 (1) for interim society care.

#### **Society to seek status review**

(2) The society having care, custody or supervision of a child,

- (a) may apply to the court at any time for a review of the child's status;
- (b) shall apply to the court for a review of the child's status before the order expires, unless the expiry is by reason of section 120; and
- (c) shall apply to the court for a review of the child's status within five days after removing the child, if the society has removed the child from the care of a person with whom the child was placed under an order for society supervision.

#### **Application of subs. (2) (a) and (c)**

(3) If a child is the subject of an order for society supervision, clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district in which the parent or other person with whom the child is placed resides.

#### **Others may seek status review**

(4) An application for review of a child's status may be made on notice to the society by,

- (a) the child, if the child is at least 12;
- (b) a parent of the child;
- (c) the person with whom the child was placed under an order for society supervision; or
- (d) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b) or (c) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### **Notice**

(5) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to,

- (a) the child, except as otherwise provided under subsection 78 (4) or (5);
- (b) the child's parent;
- (c) the person with whom the child was placed under an order for society supervision;
- (d) any foster parent who has cared for the child continuously during the six months immediately before the application; and
- (e) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b), (c) and (d) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### **Six-month period**

(6) No application shall be made under subsection (4) within six months after the latest of,

- (a) the day the original order was made under subsection 98 (1);
- (b) the day the last application by a person under subsection (4) was disposed of; or



- (c) the day any appeal from an order referred to in clause (a) or the disposition referred to in clause (b) was finally disposed of or abandoned.

### **Exception**

(7) Subsection (6) does not apply if the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out.

### **Interim care and custody**

(8) If an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody.

### **Court may vary, etc.**

**111** Where an application for review of a child's status is made under section 110, the court may, in the child's best interests,

- (a) vary or terminate the original order made under subsection 98 (1), including a term or condition or a provision for access that is part of the order;
- (b) order that the original order terminate on a specified future date;
- (c) make a further order or orders under section 98; or
- (d) make an order under section 99.

### **Status review for children in, or formerly in, extended society care**

**112** (1) This section applies where a child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), or is subject to an order for society supervision made under clause 113 (1) (a) or for custody made under clause 113 (1) (b).

### **Society to seek status review**

(2) The society that has or had care, custody or supervision of the child,

- (a) may apply to the court at any time, subject to subsection (9), for a review of the child's status;
- (b) shall apply to the court for a review of the child's status before the order expires if the order is for society supervision, unless the expiry is by reason of section 120; and
- (c) shall apply to the court for a review of the child's status within five days after removing the child, if the society has removed the child,
  - (i) from the care of a person with whom the child was placed under an order for society supervision described in clause 113 (1) (a), or
  - (ii) from the custody of a person who had custody of the child under a custody order described in clause 113 (1) (b).

### **Application of subs. (2) (a) and (c)**

(3) Clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district,

- (a) in which the parent or other person with whom the child is placed resides, if the child is the subject of an order for society supervision under clause 113 (1) (a); or
- (b) in which the person who has custody resides, if the child is the subject of a custody order under clause 113 (1) (b).

### **Others may seek status review**

(4) An application for review of a child's status under this section may be made on notice to the society by,

- (a) the child, if the child is at least 12;
- (b) a parent of the child;
- (c) the person with whom the child was placed under an order for society supervision described in clause 113 (1) (a);
- (d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 113 (1) (b);
- (e) a foster parent, if the child has lived continuously with the foster parent for at least two years immediately before the application; or
- (f) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b), (c), (d) or (e) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **When leave to apply required**

(5) Despite clause (4) (b), a parent of a child shall not make an application under subsection (4) without leave of the court if the child has, immediately before the application, received continuous care for at least two years from the same foster parent or from the same person under a custody order.

### **Notice**

(6) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to,

- (a) the child, except as otherwise provided under subsection 78 (4) or (5);
- (b) the child's parent, if the child is younger than 16;
- (c) the person with whom the child was placed, if the child is subject to an order for society supervision described in clause 113 (1) (a);
- (d) the person to whom custody of the child was granted, if the child is subject to an order for custody described in clause 113 (1) (b);
- (e) any foster parent who has cared for the child continuously during the six months immediately before the application; and
- (f) in the case of a First Nations, Inuk or Métis child, the persons described in clause (a), (b), (c), (d) or (e) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **Six-month period**

(7) No application shall be made under subsection (4) within six months after the latest of,

- (a) the day the order was made under subsection 98 (1) or 113 (1), whichever is applicable;
- (b) the day the last application by a person under subsection (4) was disposed of; or
- (c) the day any appeal from an order referred to in clause (a) or a disposition referred to in clause (b) was finally disposed of or abandoned.

### **Exception**

(8) Subsection (7) does not apply if,

- (a) the child is the subject of,
  - (i) an order for society supervision made under clause 113 (1) (a),
  - (ii) an order for custody made under clause 113 (1) (b), or
  - (iii) an order for extended society care made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) and an order for access under section 101; and
- (b) the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out.

### **No review if child placed for adoption**

(9) No person or society shall make an application under this section with respect to a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) who has been placed in a person's home by the society or by a Director for the purposes of adoption under Part VIII (Adoption and Adoption Licensing), if the child still resides in the person's home.

### **Interim care and custody**

(10) If an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody.

### **Court order**

**113 (1)** If an application for review of a child's status is made under section 112, the court may, in the child's best interests,

- (a) order that the child be placed in the care and custody of a parent or another person, subject to the supervision of the society, for a specified period of at least three months and not more than 12 months;
- (b) order that custody be granted to one or more persons, including a foster parent, with the consent of the person or persons;
- (c) order that the child be placed in extended society care until the order is terminated under this section or expires under section 120; or

- (d) terminate or vary any order made under section 98 or this section.

#### **Variation, termination or new order**

- (2) When making an order under subsection (1), the court may, subject to section 102, vary or terminate an order for access or make a further order under section 101.

#### **Termination of extended society care order**

- (3) Any previous order for extended society care made under paragraph 3 of subsection 98 (1) or clause (1) (c) is terminated if an order described in clause (1) (a) or (b) is made in respect of a child.

#### **Terms and conditions of supervision order**

- (4) If the court makes a supervision order described in clause (1) (a), the court may impose,

- (a) reasonable terms and conditions relating to the child's care and supervision;
- (b) reasonable terms and conditions on,
  - (i) the child's parent,
  - (ii) the person who will have care and custody of the child under the order,
  - (iii) the child, and
  - (iv) any other person, other than a foster parent, who is putting forward a plan or who would participate in a plan for care and custody of or access to the child; and
- (c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or purchase any goods or services.

#### **Access**

- (5) Section 102 applies with necessary modifications if the court makes an order described in clause (1) (a), (b) or (c).

#### **Custody proceeding**

- (6) Where an order is made under this section or a proceeding is commenced under this Part, any proceeding respecting custody of or access to the same child under the *Children's Law Reform Act* is stayed except by leave of the court in the proceeding under that Act.

#### **Rights and responsibilities**

- (7) A person to whom custody of a child is granted by an order under this section has the rights and responsibilities of a parent in respect of the child and must exercise those rights and responsibilities in the best interests of the child.

#### **Director's annual review of children in extended society care**

- 114** (1) A Director or a person authorized by a Director shall, at least once during each calendar year, review the status of every child,

- (a) who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c);
- (b) who was in extended society care under an order described in clause (a) throughout the immediately preceding 24 months; and
- (c) whose status has not been reviewed under this section or under section 113 during that time.

#### **Direction to society**

- (2) After a review under subsection (1), the Director may direct the society to make an application for review of the child's status under subsection 112 (2) or give any other direction that, in the Director's opinion, is in the child's best interests.

#### **Investigation by judge**

- 115** (1) The Minister may appoint a judge of the Court of Ontario to investigate a matter relating to a child in a society's care or the proper administration of this Part, and a judge who is appointed shall conduct the investigation and make a written report to the Minister.

#### **Application of *Public Inquiries Act, 2009***

- (2) Section 33 of the *Public Inquiries Act, 2009* applies to an investigation by a judge under subsection (1).

#### **Complaint to society**

- 116** (1) A person may make a complaint to a society relating to a service sought or received by that person from the society in accordance with the regulations.



### **Complaint review procedure**

(2) Where a society receives a complaint under subsection (1), it shall deal with the complaint in accordance with the complaint review procedure established by regulation, subject to subsection 117 (2).

### **Public availability**

~~(3) A society shall make information relating to the complaint review procedure available to any person upon request.~~

### **Public availability**

(3) A society shall make information relating to the complaint review procedure available to the public and to any person upon request.

### **Society's decision**

(4) Subject to subsection (5), the decision of a society made upon completion of the complaint review procedure is final.

### **Application for review by Board**

(5) If a complaint relates to one of the following matters, the complainant may apply to the Board in accordance with the regulations for a review of the decision made by the society upon completion of the complaint review procedure:

1. A matter described in subsection 117 (4).
2. Any other prescribed matter.

### **Review by Board**

(6) Upon receipt of an application under subsection (5), the Board shall give the society notice of the application and conduct a review of the society's decision.

### **Composition of Board**

(7) The Board shall be composed of members with the prescribed qualifications and prescribed experience.

### **Hearing optional**

(8) The Board may hold a hearing and, if a hearing is held, the Board shall comply with the prescribed practices and procedures.

### **Non-application**

(9) The *Statutory Powers Procedure Act* does not apply to a hearing under this section.

### **Board decision**

(10) Upon completing its review of a decision by a society in relation to a complaint, the Board may,

- (a) in the case of a matter described in subsection 117 (4), make any order described in subsection 117 (7), as appropriate;
- (b) redirect the matter to the society for further review;
- (c) confirm the society's decision; or
- (d) make such other order as may be prescribed.

### **No review if matter within purview of court**

(11) A society shall not conduct a review of a complaint under this section if the subject of the complaint,

- (a) is an issue that has been decided by the court or is before the court; or
- (b) is subject to another decision-making process under this Act or the *Labour Relations Act, 1995*.

### **Complaint to Board**

**117** (1) If a complaint in respect of a service sought or received from a society relates to a matter described in subsection (4), the person who sought or received the service may,

- (a) decide not to make the complaint to the society under section 116 and make the complaint directly to the Board under this section; or
- (b) where the person first makes the complaint to the society under section 116, submit the complaint to the Board before the society's complaint review procedure is completed.

### **Notice to society**

(2) If a person submits a complaint to the Board under clause (1) (b) after having brought the complaint to the society under section 116, the Board shall give the society notice of that fact and the society may terminate or stay its review, as it considers appropriate.

## **Complaint to Board**

(3) A complaint to the Board under this section shall be made in accordance with the regulations.

### **Matters for Board review**

(4) The following matters may be reviewed by the Board under this section:

1. Allegations that the society has refused to proceed with a complaint made by the complainant under subsection 116 (1) as required under subsection 116 (2).
2. Allegations that the society has failed to respond to the complainant's complaint within the timeframe required by regulation.
3. Allegations that the society has failed to comply with the complaint review procedure or with any other procedural requirements under this Act relating to the review of complaints.
4. Allegations that the society has failed to comply with subsection 14 (2).
5. Allegations that the society has failed to provide the complainant with reasons for a decision that affects the complainant's interests.
6. Such other matters as may be prescribed.

### **Review by Board**

(5) Upon receipt of a complaint under this section, the Board shall conduct a review of the matter.

### **Application**

(6) Subsections 116 (7), (8) and (9) apply with necessary modification to a review of a complaint made under this section.

### **Board decision**

(7) After reviewing the complaint, the Board may,

- (a) order the society to proceed with the complaint made by the complainant in accordance with the complaint review procedure established by regulation;
- (b) order the society to provide a response to the complainant within a period specified by the Board;
- (c) order the society to comply with the complaint review procedure established by regulation or with any other requirements under this Act;
- (d) order the society to provide written reasons for a decision to a complainant;
- (e) dismiss the complaint; or
- (f) make such other order as may be prescribed.

### **No review if matter within purview of court**

(8) The Board shall not conduct a review of a complaint under this section if the subject of the complaint,

- (a) is an issue that has been decided by the court or is before the court; or
- (b) is subject to another decision-making process under this Act or the *Labour Relations Act, 1995*.

## **APPEALS**

### **Appeal**

**118** (1) An appeal from a court's order under this Part may be made to the Superior Court of Justice by,

- (a) the child, if the child is entitled to participate in the proceeding under subsection 78 (6) (child's participation);
- (b) any parent of the child;
- (c) the person who had charge of the child immediately before intervention under this Part;
- (d) a Director or local director; or
- (e) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b), (c) or (d) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **Exception**

(2) Subsection (1) does not apply to an order for an assessment under section 95.

### **Care and custody pending appeal**

(3) Where a decision regarding the care and custody of a child is appealed under subsection (1), execution of the decision shall be stayed for the 10 days immediately following service of the notice of appeal on the court that made the decision, and where the child is in the society's care and custody at the time the decision is made, the child shall remain in the care and custody of the society until,

- (a) the 10-day period of the stay has expired; or
- (b) an order is made under subsection (4),

whichever is earlier.

### **Temporary order**

(4) The Superior Court of Justice may, in the child's best interests, make a temporary order for the child's care and custody pending final disposition of the appeal, and the court may, on any party's motion before the final disposition of the appeal, vary or terminate the order or make a further order.

### **No extension where child placed for adoption**

(5) No extension of the time for an appeal shall be granted where the child has been placed for adoption under Part VIII (Adoption and Adoption Licensing).

### **Further evidence**

(6) The court may receive further evidence relating to events after the appealed decision.

### **Place of hearing**

(7) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

### **Application of s. 85**

(8) Section 85 (rules re hearings) applies with necessary modifications to an appeal under this section.

## **EXPIRY OF ORDERS**

### **Time limit**

**119** (1) Subject to subsections (4) and (5), the court shall not make an order for interim society care under paragraph 2 of subsection 98 (1) that results in a child being in the care and custody of a society for a period exceeding,

- (a) 12 months, if the child is younger than 6 on the day the court makes the order; or
- (b) 24 months, if the child is 6 or older on the day the court makes the order.

### **Calculation of time limit**

(2) The time during which a child has been in a society's care and custody pursuant to the following shall be counted in calculating the period referred to in subsection (1):

- 1. An agreement made under subsection 74 (1) (temporary care agreement).
- 2. A temporary order made under clause 91 (2) (d) (custody during adjournment).

### **Previous periods to be counted**

(3) The period referred to in subsection (1) shall include any previous periods that the child was in a society's care and custody under an interim society care order made under paragraph 2 of subsection 98 (1) or as described in subsection (2) other than periods that precede a continuous period of five or more years that the child was not in a society's care and custody.

### **Deemed extension of time limit**

(4) Where the period referred to in subsection (1) or (5) expires and,

- (a) an appeal of an order made under subsection 98 (1) has been commenced and is not yet finally disposed of; or
- (b) the court has adjourned a hearing under section 111 (status review),

the period is deemed to be extended until the appeal has been finally disposed of and any new hearing ordered on appeal has been completed or an order has been made under section 111, as the case may be.

### **Six-month extension**

(5) Subject to paragraphs 2 and 4 of subsection 98 (1), the court may by order extend the period permitted under subsection (1) by a period not to exceed six months if it is in the child's best interests to do so.



### Expiry of orders

**120** An order under this Part expires when the child who is the subject of the order,

- (a) turns 18; or
- (b) marries,

whichever comes first.

### CONTINUED CARE AND SUPPORT

#### Continued care and support

**121** (1) ~~A society and, in the case of a First Nations, Inuk or Métis person, an agency, may provide care and support to a person in accordance with the regulations in one of the following circumstances:~~

- ~~1. A custody order under clause 113 (1) (b) or an order for extended society care under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) was made in relation to that person as a child and the order expires under section 120.~~
- ~~2. The person entered into an agreement with the society under section 76 and the agreement expires on the person's 18th birthday.~~
- ~~3. The person is 18 or older and, when the person was 16 or 17, the person was eligible for the prescribed support services, whether or not the person was receiving such services.~~
- ~~4. In the case of a First Nations, Inuk or Métis person who is 18 or older, paragraph 1, 2 or 3 applies or the person was being cared for under customary care immediately before their 18th birthday and the person who was caring for them was receiving a subsidy from the society or an entity under section 70.~~

#### Resuming receipt

~~(2) Subject to the terms and conditions in this section, a person who chooses to stop receiving care and support under this section may choose to resume receiving it.~~

#### Same

~~(3) Subsection (2) applies where the person has chosen to stop receiving care and support on one occasion or, at the discretion of the society or agency providing the care and support on more than one occasion.~~

#### Continued care and support

**121** A society or prescribed entity shall enter into an agreement to provide care and support to a person in accordance with the regulations in each of the following circumstances:

- 1. A custody order under clause 113 (1) (b) or an order for extended society care under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) was made in relation to that person as a child and the order expires under section 120.
- 2. The person entered into an agreement with the society under section 76 and the agreement expires on the person's 18th birthday.
- 3. The person is 18 or older and was eligible for the prescribed support services.
- 4. In the case of a First Nations, Inuk or Métis person who is 18 or older, paragraph 1, 2 or 3 applies or the person was being cared for under customary care immediately before their 18th birthday and the person who was caring for them was receiving a subsidy from the society or an entity under section 70.

### DUTY TO REPORT

#### Duty to report child in need of protection

**122** (1) Despite the provisions of any other Act, if a person, including a person who performs professional or official duties with respect to children, has reasonable grounds to suspect one of the following, the person shall immediately report the suspicion and the information on which it is based to a society:

- 1. The child has suffered physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
  - i. failure to adequately care for, provide for, supervise or protect the child, or
  - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.
- 2. There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
  - i. failure to adequately care for, provide for, supervise or protect the child, or
  - ii. pattern of neglect in caring for, providing for, supervising or protecting the child.

3. The child has been sexually abused or sexually exploited by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual abuse or sexual exploitation and fails to protect the child.
4. There is a risk that the child is likely to be sexually abused or sexually exploited as described in paragraph 3.
5. The child requires treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or, where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, the treatment on the child's behalf.
6. The child has suffered emotional harm, demonstrated by serious,
  - i. anxiety,
  - ii. depression,
  - iii. withdrawal,
  - iv. self-destructive or aggressive behaviour, or
  - v. delayed development,
 and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
7. The child has suffered emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the harm.
8. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.
9. There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph 6 i, ii, iii, iv or v and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to prevent the harm.
10. The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide the treatment or access to the treatment, or where the child is incapable of consenting to the treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition.
11. The child's parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.
12. The child is younger than 12 and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide services or treatment or access to services or treatment, or, where the child is incapable of consenting to treatment under the *Health Care Consent Act, 1996*, refuses or is unavailable or unable to consent to treatment.
13. The child is younger than 12 and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately.

### **Ongoing duty to report**

(2) A person who has additional reasonable grounds to suspect one of the matters set out in subsection (1) shall make a further report under subsection (1) even if the person has made previous reports with respect to the same child.

### **Person must report directly**

(3) A person who has a duty to report a matter under subsection (1) or (2) shall make the report directly to the society and shall not rely on any other person to report on the person's behalf.

### **Duty to report does not apply to older children**

(4) Subsections (1) and (2) do not apply in respect of a child who is 16 or 17, but a person may make a report under subsection (1) or (2) in respect of a child who is 16 or 17 if either a circumstance or condition described in paragraphs 1 to 11 of subsection (1) or a prescribed circumstance or condition exists.

**Offence**

(5) A person referred to in subsection (6) is guilty of an offence if,

- (a) the person contravenes subsection (1) or (2) by not reporting a suspicion; and
- (b) the information on which it was based was obtained in the course of the person's professional or official duties.

**Professionals and officials**

(6) Subsection (5) applies to every person who performs professional or official duties with respect to children including,

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, person appointed to a position designated by a board of education as requiring an early childhood educator, school principal, social worker, family counsellor, youth and recreation worker, and operator or employee of a child care centre or home child care agency or provider of licensed child care within the meaning of the *Child Care and Early Years Act, 2014*;
- (c) a religious official;
- (d) a mediator and an arbitrator;
- (e) a peace officer and a coroner;
- (f) a lawyer; and
- (g) a service provider and an employee of a service provider.

**Volunteer excluded**

(7) In clause (6) (b),

"youth and recreation worker" does not include a volunteer.

**Director, officer or employee of corporation**

(8) A director, officer or employee of a corporation who authorizes, permits or concurs in the commission of an offence under subsection (5) by an employee of the corporation is guilty of an offence.

**Penalty**

(9) A person convicted of an offence under subsection (5) or (8) is liable to a fine of not more than \$5,000.

**Section overrides privilege; protection from liability**

(10) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with this section unless the person acts maliciously or without reasonable grounds for the suspicion.

**Solicitor-client privilege**

(11) Nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

**Conflict**

(12) This section prevails despite anything in the *Personal Health Information Protection Act, 2004*.

**Society to assess and verify report of child in need of protection**

**123** (1) A society that receives a report under section 122 that a child, including a child in the society's care or supervision, is or may be in need of protection shall as soon as possible carry out an assessment as prescribed and verify the reported information, or ensure that the information is assessed and verified by another society.

**Protection from liability**

(2) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (1) or for an alleged neglect or default of that duty.

**Society to report abuse of child in its care and custody**

**124** (1) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall report the information to a Director as soon as possible.

**Definition**

(2) In this section and in sections 126 and 130,

"to suffer abuse", when used in reference to a child, means to be in need of protection within the meaning of clause 73 (2) (a), (c), (e), (f), (g) or (j).



### **Duty to report child's death**

**125** A person or society that obtains information that a child has died shall report the information to a coroner if,

- (a) a court made an order under this Act denying access to the child by a parent of the child or making the access subject to supervision;
- (b) on the application of a society, a court varied the order to grant the access or to make it no longer subject to supervision; and
- (c) the child subsequently died as a result of a criminal act committed by a parent or family member who had custody or charge of the child at the time of the act.

## **REVIEW TEAMS**

### **Review team**

**126** (1) In this section,

“review team” means a team established by a society under subsection (2).

### **Composition**

(2) Every society shall establish a review team that includes,

- (a) persons who are professionally qualified to perform medical, psychological, developmental, educational or social assessments; and
- (b) at least one legally qualified medical practitioner.

### **Chair**

(3) The members of a review team shall choose a chair from among themselves.

### **Duty of team**

(4) Whenever a society refers the case of a child who may be suffering or may have suffered abuse to its review team, the review team or a panel of at least three of its members, designated by the chair, shall,

- (a) review the case; and
- (b) recommend to the society how the child may be protected.

### **Disclosure to team permitted**

(5) Despite the provisions of any other Act, a person may disclose to a review team or to any of its members information reasonably required for a review under subsection (4).

### **Section overrides privilege; protection from liability**

(6) Subsection (5) applies although the information disclosed may be confidential or privileged and no action for disclosing the information shall be instituted against a person who acts in accordance with subsection (5), unless the person acts maliciously or without reasonable grounds.

### **Where child not to be returned without review or hearing**

(7) Where a society with a review team has information that a child placed in its care under subsection 91 (2) (custody during adjournment) or subsection 98 (1) (order where child in need of protection) may have suffered abuse, the society shall not return the child to the care of the person who had charge of the child at the time of the possible abuse unless,

- (a) the society has,
  - (i) referred the case to its review team, and
  - (ii) obtained and considered the review team's recommendations; or
- (b) the court has terminated the order placing the child in the society's care.

## **COURT-ORDERED ACCESS TO RECORDS**

### **Production of records**

#### **Definition**

**127** (1) In this section and sections 128 and 129,

“record of personal health information” has the same meaning as in the *Mental Health Act*.

### **Motion or application for production of record**

(2) A Director or a society may at any time make a motion or an application for an order under subsection (3) or (4) for the production of a record or part of a record.

#### **Order on motion**

(3) Where the court is satisfied that a record or part of a record that is the subject of a motion referred to in subsection (2) contains information that may be relevant to a proceeding under this Part and that the person in possession or control of the record has refused to permit a Director or the society to inspect it, the court may order that the person in possession or control of the record produce it or a specified part of it for inspection and copying by the Director, by the society or by the court.

#### **Order on application**

(4) Where the court is satisfied that a record or part of a record that is the subject of an application referred to in subsection (2) may be relevant to assessing compliance with one of the following and that the person in possession or control of the record has refused to permit a Director or the society to inspect it, the court may order that the person in possession or control of the record produce it or a specified part of it for inspection and copying by the Director, by the society or by the court:

1. An order under clause 91 (2) (b) or (c) that is subject to supervision.
2. An order under clause 91 (2) (c) or (d) with respect to access.
3. A supervision order under paragraph 1 or 4 of subsection 98 (1).
4. An access order under section 101.
5. An order with respect to access or supervision on an application under section 110 or 112.
6. A custody order under section 113.
7. A restraining order under section 134.

#### **Court may examine record**

(5) In considering whether to make an order under subsection (3) or (4), the court may examine the record.

#### **Information confidential**

(6) No person who obtains information by means of an order made under subsection (3) or (4) shall disclose the information except,

- (a) as specified in the order; and
- (b) in testimony in a proceeding under this Part.

#### **Conflict**

(7) Subsection (6) prevails despite anything in the *Personal Health Information Protection Act, 2004*.

#### **Solicitor-client privilege**

(8) Subject to subsection (9), this section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

#### **Application of Mental Health Act**

(9) Where a motion or an application under subsection (2) concerns a record of personal health information, subsection 35 (6) (attending physician's statement, hearing) of the *Mental Health Act* applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 35 (7) of that Act; and
- (b) the need to protect the child.

#### **Application of s. 290**

(10) Where a motion or an application under subsection (2) concerns a record that is a record of a mental disorder within the meaning of section 290, that section applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 290 (6); and
- (b) the need to protect the child.

#### **Warrant for access to record**

**128** (1) The court or a justice of the peace may issue a warrant for access to a record or a specified part of it if the court or justice of the peace is satisfied on the basis of information on oath from a Director or a person designated by a society that there are reasonable grounds to believe that the record or part of the record is relevant to investigate an allegation that a child is or may be in need of protection.

### **Authority conferred by warrant**

- (2) The warrant authorizes the Director or the person designated by the society to,
- (a) inspect the record specified in the warrant during normal business hours or during the hours specified in the warrant;
  - (b) make copies from the record in any manner that does not damage the record; and
  - (c) remove the record for the purpose of making copies.

### **Return of record**

- (3) A person who removes a record under clause (2) (c) shall promptly return it after copying it.

### **Admissibility of copies**

- (4) A copy of a record that is the subject of a warrant under this section and that is certified as being a true copy of the original by the person who made the copy is admissible in evidence to the same extent as and has the same evidentiary value as the record.

### **Duration of warrant**

- (5) The warrant is valid for seven days.

### **Execution**

- (6) The Director or the person designated by the society may call on a peace officer for assistance in executing the warrant.

### **Solicitor-client privilege**

- (7) This section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.

### **Application of *Mental Health Act***

- (8) If a warrant issued under this section concerns a record of personal health information and the warrant is challenged under subsection 35 (6) (attending physician's statement, hearing) of the *Mental Health Act*, equal consideration shall be given to,

- (a) the matters set out in subsection 35 (7) of that Act; and
- (b) the need to protect the child.

### **Application of s. 290**

- (9) If a warrant issued under this section concerns a record of a mental disorder within the meaning of section 290 and the warrant is challenged under section 290, equal consideration shall be given to,

- (a) the matters set out in subsection 290 (6); and
- (b) the need to protect the child.

### **Telewarrant**

- 129** (1) Where a Director or a person designated by a society believes that there are reasonable grounds for the issuance of a warrant under section 128 and that it would be impracticable to appear personally before the court or a justice of the peace to make application for a warrant in accordance with section 128, the Director or person designated by the society may submit an information on oath by telephone or other means of telecommunication to a justice designated for the purpose by the Chief Justice of the Ontario Court of Justice.

### **Same**

- (2) The information shall,
- (a) include a statement of the grounds to believe that the record or part of the record is relevant to investigate an allegation that a child is or may be in need of protection; and
  - (b) set out the circumstances that make it impracticable for the Director or person designated by the society to appear personally before a court or justice of the peace.

### **Warrant to be issued**

- (3) The justice may issue a warrant for access to the record or the specified part of it if the justice is satisfied that the application discloses,

- (a) reasonable grounds to believe that the record or the part of a record is relevant to investigate an allegation that a child is or may be in need of protection; and
- (b) reasonable grounds to dispense with personal appearance for the purpose of an application under section 128.



**Validity of warrant**

(4) A warrant issued under this section is not subject to challenge by reason only that there were not reasonable grounds to dispense with personal appearance for the purpose of an application under section 128.

**Application of provisions**

(5) Subsections 128 (2) to (9) apply with necessary modifications with respect to a warrant issued under this section.

**Definition**

(6) In this section,

“justice” means justice of the peace, a judge of the Ontario Court of Justice or a judge of the Family Court of the Superior Court of Justice.

**CHILD ABUSE REGISTER****Register**

**130** (1) In this section and in section 131,

“Director” means the person appointed under subsection (2); (“directeur”)

“register” means the register maintained under subsection (5); (“registre”)

“registered person” means a person identified in the register, but does not include,

- (a) a person who reports to a society under subsection 122 (1) or (2) and is not the subject of the report, or
- (b) the child who is the subject of a report. (“personne inscrite”)

**Director**

(2) The Minister may appoint an employee in the Ministry as Director for the purposes of this section.

**Duty of society**

(3) A society that receives a report under section 122 that a child, including a child in the society’s care, is or may be suffering or may have suffered abuse shall verify the reported information as soon as possible, or ensure that the information is verified by another society, in the manner determined by the Director, and if the information is verified, the society that verified it shall report it to the Director in the prescribed form as soon as possible.

**Protection from liability**

(4) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (3) or for an alleged neglect or default of that duty.

**Child abuse register**

(5) The Director shall maintain a register in the prescribed manner for the purpose of recording information reported to the Director under subsection (3), but the register shall not contain information that has the effect of identifying a person who reports to a society under subsection 122 (1) or (2) and is not the subject of the report.

**Register confidential**

(6) Despite Part X (Personal Information) and any other Act, no person shall inspect, remove or alter or permit the inspection, removal or alteration of information in the register, or disclose or permit the disclosure of information that the person obtained from the register, except as this section authorizes.

**Coroner’s inquest, etc.**

(7) The following persons may inspect, remove and disclose information in the register in accordance with that person’s authority:

- 1. A coroner, or a legally qualified medical practitioner or peace officer authorized in writing by a coroner, acting in connection with an investigation or inquest under the *Coroners Act*.
- 2. The Children’s Lawyer or the Children’s Lawyer’s authorized agent.

**Minister or Director may permit access to register**

(8) The Minister or the Director may permit the following persons to inspect and remove information in the register and to disclose the information to a person referred to in subsection (7) or to another person referred to in this subsection, subject to such terms and conditions as the Director may impose:

- 1. A person who is employed,
  - i. in the Ministry,

- ii. by a society, or
- iii. by a child welfare authority outside Ontario.

2. A person who is providing or proposes to provide counselling or treatment to a registered person.

### **Minister or Director may disclose information**

(9) The Minister or the Director may disclose information in the register to a person referred to in subsection (7) or (8).

### **Research**

(10) A person who is engaged in research may, with the Director's written approval, inspect and use the information in the register, but shall not,

- (a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or
- (b) communicate any information that may have the effect of identifying a person named in the register.

### **Access by child or registered person**

(11) A child, a registered person or the child's or registered person's lawyer or agent may inspect only the information in the register that refers to the child or registered person.

### **Physician**

(12) A legally qualified medical practitioner may, with the Director's written approval, inspect the information in the register that is specified by the Director.

### **Amendment of register**

(13) The Director or an employee in the Ministry acting under the Director's authority,

- (a) shall remove a name from or otherwise amend the register where the regulations require the removal or amendment; and
- (b) may amend the register to correct an error.

### **Register inadmissible: exceptions**

(14) The register shall not be admitted into evidence in a proceeding except,

- (a) to prove compliance or non-compliance with this section;
- (b) in a hearing or appeal under section 131;
- (c) in a proceeding under the *Coroners Act*; or
- (d) in a proceeding referred to in section 135.

### **Hearing re registered person**

#### **Definition**

**131** (1) In this section,

"hearing" means a hearing held under clause (4) (b).

#### **Notice to registered person**

(2) Where an entry is made in the register, the Director shall as soon as possible give written notice to each registered person referred to in the entry indicating that,

- (a) the person is identified in the register;
- (b) the person or the person's lawyer or agent is entitled to inspect the information in the register that refers to or identifies the person; and
- (c) the person is entitled to request that the Director remove the person's name from or otherwise amend the register.

#### **Request to amend register**

(3) A registered person who receives notice under subsection (2) may request that the Director remove the person's name from or otherwise amend the register.

#### **Director's response**

(4) On receiving a request under subsection (3), the Director may,

- (a) grant the request; or

- (b) hold a hearing, on 10 days written notice to the parties, to determine whether to grant or refuse the request.

### **Delegation**

- (5) The Director may authorize another person to hold a hearing and exercise the Director's powers and duties under subsection (8).

### **Procedure**

- (6) The *Statutory Powers Procedure Act* applies to a hearing and a hearing shall be conducted in accordance with the prescribed practices and procedures.

### **Hearing**

- (7) The parties to a hearing are,
- (a) the registered person;
  - (b) the society that verified the information referring to or identifying the registered person; and
  - (c) any other person specified by the Director.

### **Director's decision**

- (8) Where the Director determines, after holding a hearing, that the information in the register with respect to a registered person is in error or should not be in the register, the Director shall remove the registered person's name from or otherwise amend the register, and may order that the society's records be amended to reflect the Director's decision.

### **Appeal to Divisional Court**

- (9) A party to a hearing may appeal the Director's decision to the Divisional Court.

### **Hearing private**

- (10) A hearing or appeal under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

### **Publication**

- (11) No person shall publish or make public information that has the effect of identifying a witness at or a participant in a hearing, or a party to a hearing other than a society.

### **Record inadmissible: exception**

- (12) The record of a hearing or appeal under this section shall not be admitted into evidence in any other proceeding except a proceeding under clause 139 (1) (c) (confidentiality of child abuse register) or clause 139 (1) (d) (amendment of society's records).

## **POWERS OF DIRECTOR**

### **Director's power to transfer**

- 132** (1) A Director may direct, in the best interests of a child in the care or supervision of a society, that the child,
- (a) be transferred to the care or supervision of another society; or
  - (b) be transferred from one placement to another placement designated by the Director.

### **Criteria**

- (2) In determining whether to direct a transfer under clause (1) (b), the Director shall take into account,
- (a) the length of time the child has spent in the existing placement;
  - (b) the views of the foster parents; and
  - (c) the views and wishes of the child, given due weight in accordance with the child's age and maturity.

## **OFFENCES, RESTRAINING ORDERS, RECOVERY ON CHILD'S BEHALF AND INJUNCTIONS**

### **Abuse, failure to provide for reasonable care, etc.**

#### **Definition**

- 133** (1) In this section,

"abuse" means a state or condition of being physically harmed, sexually abused or sexually exploited.

#### **Child abuse**

- (2) No person having charge of a child shall,
- (a) inflict abuse on the child; or



- (b) by failing to care and provide for or supervise and protect the child adequately,
  - (i) permit the child to suffer abuse, or
  - (ii) permit the child to suffer from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development.

#### **Leaving child unattended**

(3) No person having charge of a child younger than 16 shall leave the child without making provision for the child's supervision and care that is reasonable in the circumstances.

#### **Allowing child to loiter, etc.**

- (4) No parent of a child younger than 16 shall permit the child to,
  - (a) loiter in a public place between the hours of midnight and 6 a.m.; or
  - (b) be in a place of public entertainment between the hours of midnight and 6 a.m., unless the parent accompanies the child or authorizes a specified individual 18 or older to accompany the child.

#### **Police may take child home or to place of safety**

~~(5) Where a child who is actually or apparently younger than 16 is in a place to which the public has access between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (4) (b), a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 82 (1).~~

#### **Police may bring child home or to place of safety**

(5) Where a child who is actually or apparently younger than 16 is in a place to which the public has access between the hours of midnight and 6 a.m. and is not accompanied by a person described in clause (4) (b), a peace officer may bring the child to a place of safety without a warrant and proceed as if the child had been brought to a place of safety under subsection 82 (1).

#### **Child protection hearing**

(6) The court may, in connection with a case arising under subsection (2), (3) or (4), proceed under this Part as if an application had been made under subsection 80 (1) (child protection proceeding) in respect of the child.

#### **Restraining order**

**134** (1) Instead of making an order under subsection 98 (1) or section 113 or in addition to making a temporary order under subsection 91 (2) or an order under subsection 98 (1) or section 113, the court may make one or more of the following orders in the child's best interests:

1. An order restraining or prohibiting a person's access to or contact with the child, and may include in the order such directions as the court considers appropriate for implementing the order and protecting the child.
2. An order restraining or prohibiting a person's contact with the person who has lawful custody of the child following a temporary order made under subsection 91 (2) or an order made under subsection 98 (1) or clause 113 (1) (a) or (b).

#### **Notice**

(2) An order shall not be made under subsection (1) unless notice of the proceeding has been served personally on the person to be named in the order.

#### **Duration of the order**

(3) An order made under subsection (1) shall continue in force for such period as the court considers in the best interests of the child and,

- (a) if the order is made in addition to a temporary order made under subsection 91 (2) or an order made under subsection 98 (1) or clause 113 (1) (a), (b) or (c), the order may provide that it continues in force, unless it is varied, extended or terminated by the court, as long as the temporary order made under subsection 91 (2) or the order made under subsection 98 (1) or clause 113 (1) (a), (b) or (c), as the case may be, remains in force; or
- (b) if the order is made instead of an order under subsection 98 (1) or clause 113 (1) (a), (b) or (c) or if the order is made in addition to an order under clause 113 (1) (d), the order may provide that it continues in force until it is varied or terminated by the court.

#### **Application for extension, variation or termination**

- (4) An application for the extension, variation or termination of an order made under subsection (1) may be made by,
  - (a) the person who is the subject of the order;
  - (b) the child;

- (c) the person having charge of the child;
- (d) a society;
- (e) a Director; or
- (f) in the case of a First Nations, Inuk or Métis child, a person described in clause (a), (b), (c), (d) or (e) or a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

#### **Order for extension, variation or termination**

- (5) Where an application is made under subsection (4), the court may, in the child's best interests,
- (a) extend the order for such period as the court considers to be in the best interests of the child, in the case of an order described in clause (3) (a); or
  - (b) vary or terminate the order.

#### **Child in society's care not to be returned while order in force**

- (6) Where a society has care of a child and an order made under subsection (1) prohibiting a person's access to the child is in force, the society shall not return the child to the care of,
- (a) the person named in the order; or
  - (b) a person who may permit that person to have access to the child.

#### **Legal claim for recovery because of abuse**

**135 (1)** In this section,

"to suffer abuse", when used in reference to a child, means to be in need of protection within the meaning of clause 73 (2) (a), (c), (e), (f), (g) or (j).

#### **Recovery on child's behalf**

(2) When the Children's Lawyer is of the opinion that a child has a cause of action or other claim because the child has suffered abuse and considers it to be in the child's best interests, the Children's Lawyer may institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation.

#### **Society may apply**

(3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications.

#### **Prohibition**

**136** No person shall place a child in the care and custody of a society, and no society shall take a child into its care and custody, except in accordance with this Part.

#### **Offences re interfering, etc. with child in society supervision or care**

**137** If a child is the subject of an order for society supervision, interim society care or extended society care made under paragraph 1, 2 or 3 of subsection 98 (1) or clause 113 (1) (a) or (c), no person shall,

- (a) induce or attempt to induce the child to leave the care of the person with whom the child is placed by the court or by the society, as the case may be;
- (b) detain or harbour the child after the person or society referred to in clause (a) requires that the child be returned;
- (c) interfere with the child or remove or attempt to remove the child from any place; or
- (d) for the purpose of interfering with the child, visit or communicate with the person referred to in clause (a).

#### **Offences re false information, obstruction, etc.**

**138** No person shall,

- (a) knowingly give false information in an application under this Part; or
- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker or a peace officer who is acting under section 80, 81, 82, 83 or 84.

#### **Other offences**

**139 (1)** A person who contravenes,

- (a) an order for access made under subsection 101 (1);
- (b) subsection 127 (6) (disclosure of information);
- (c) subsection 130 (6) or (10) (confidentiality of child abuse register);

- (d) an order made under subsection 131 (8) (amendment of society's records);
- (e) subsection 133 (3) or (4) (leaving child unattended, etc.);
- (f) a restraining order made under subsection 134 (1);
- (g) section 136 (unauthorized placement);
- (h) any provision of section 137 (interference with child, etc.); or
- (i) clause 138 (a) or (b) (false information, obstruction, etc.),

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both.

#### **Offence of child abuse**

(2) A person who contravenes subsection 133 (2) (child abuse), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

#### **Offences re publication**

(3) A person who contravenes subsection 85 (8) or 131 (11) (publication of identifying information) or an order prohibiting publication made under clause 85 (7) (c) or subsection 85 (9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both.

#### **Injunction**

**140** (1) The Superior Court of Justice may grant an injunction to restrain a person from contravening section 137, on the society's application.

#### **Variation, etc.**

(2) The court may vary or terminate an order made under subsection (1), on any person's application.

## **PART VI YOUTH JUSTICE**

### **Definitions**

**141** In this Part,

"bailiff" means a bailiff appointed under clause 143 (1) (c); ("huissier")

"Board" means the Custody Review Board continued under subsection 148 (1); ("Commission")

"probation officer" means,

- (a) a person appointed or designated by the Lieutenant Governor in Council or their delegate to perform any of the duties or functions of a youth worker under the *Youth Criminal Justice Act* (Canada), or
- (b) a probation officer appointed under clause 143 (1) (b); ("agent de probation")

### **PROGRAMS AND OFFICERS**

### **Programs**

#### **Secure and open temporary detention programs**

**142** (1) The Minister may establish the following in places of temporary detention:

1. Secure temporary detention programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community.
2. Open temporary detention programs, in which restrictions that are less stringent than in a secure temporary detention program are imposed on the liberty of young persons.

#### **Secure custody programs**

(2) The Minister may establish secure custody programs in places of secure custody.

#### **Open custody programs**

(3) The Minister may establish open custody programs in places of open custody.



### **Where locking up permitted**

(4) A place of secure custody and a place of secure temporary detention may be locked for the detention of young persons.

### **Appointments by Minister**

**143** (1) The Minister may appoint any person or class of persons as,

- (a) a provincial director, to perform any or all of the duties and functions of a provincial director,
  - (i) under the *Youth Criminal Justice Act* (Canada), and
  - (ii) under this Act and the regulations;
- (b) a probation officer, to perform any or all of the duties and functions,
  - (i) of a youth worker under the *Youth Criminal Justice Act* (Canada),
  - ~~(ii) of a probation officer for the purpose of dealing with young persons under the *Provincial Offences Act*, and~~
  - ~~(ii) of a probation officer for purposes related to young persons under the *Provincial Offences Act*, and~~
  - (iii) of a probation officer under this Act and the regulations; and
- (c) a bailiff, to perform any or all of the duties and functions of a bailiff under the regulations.

### **Conditions or limitations on appointments**

(2) The Minister may set out in an appointment made under subsection (1) any conditions or limitations to which it is subject.

### **Probation officer and bailiff have powers of peace officer**

(3) While performing their duties and functions, a probation officer appointed under clause (1) (b) and a bailiff appointed under clause (1) (c) have the powers of a peace officer.

### **Designation of peace officers**

(4) The Minister may designate in writing,

- (a) a person who is an employee in the Ministry or is employed in a place of open custody, of secure custody or of temporary detention to be a peace officer while performing the person's duties and functions; or
- (b) a class of persons, from among the persons described in clause (a), to be peace officers while performing their duties and functions.

### **Conditions or limitations on designations**

(5) The Minister may set out in a designation made under subsection (4) any conditions or limitations to which it is subject.

### **Remuneration and expenses**

(6) The remuneration and expenses of a person appointed under subsection (1) who is not a public servant employed under Part III of the *Public Service of Ontario Act, 2006* shall be fixed by the Minister and shall be paid out of legislative appropriations.

### **Reports and information**

**144** A person in charge of a place of temporary detention, of open custody or of secure custody, a bailiff and a probation officer,

- (a) shall make the prescribed reports and provide the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and
- (b) shall make a report and provide information to the Minister whenever the Minister requests it.

## **TEMPORARY DETENTION**

### **Open and secure temporary detention**

#### **Open temporary detention unless provincial director determines otherwise**

**145** (1) A young person who is detained under the *Youth Criminal Justice Act* (Canada) in a place of temporary detention shall be detained in a place of open temporary detention unless a provincial director determines under subsection (2) that the young person is to be detained in a place of secure temporary detention.

#### **Where secure temporary detention available**

(2) A provincial director may detain a young person in a place of secure temporary detention if the provincial director is satisfied that it is necessary on one of the following grounds:

1. The young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,
  - i. the offence includes causing or attempting to cause serious bodily harm to another person,
  - ii. the young person has, at any time, failed to appear in court when required to do so under the *Youth Criminal Justice Act* (Canada) or escaped or attempted to escape from lawful detention, or
  - iii. the young person has, within the 12 months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more.
2. The young person is detained in a place of temporary detention and leaves or attempts to leave without the consent of the person in charge or is charged with having escaped or attempting to escape from lawful custody or being unlawfully at large under the *Criminal Code* (Canada).
3. The provincial director is satisfied, having regard to all the circumstances, including any substantial likelihood the young person will commit a criminal offence or interfere with the administration of justice if placed in a place of open temporary detention, that it is necessary to detain the young person in a place of secure temporary detention,
  - i. to ensure the young person's attendance at court,
  - ii. for the protection and safety of the public, or
  - iii. for the safety or security within a place of temporary detention.

#### **Until return to secure custody**

(3) Despite subsection (1), a young person who is apprehended because they have left or have not returned to a place of secure custody may be detained in a place of secure temporary detention until they are returned to the first-named place of custody.

#### **Until determination**

(4) Despite subsection (1), a young person who is detained under the *Youth Criminal Justice Act* (Canada) in a place of temporary detention may be detained in a place of secure temporary detention for a period not exceeding 24 hours while a provincial director makes a determination in respect of the young person under subsection (2).

#### **Review of secure temporary detention**

(5) A young person who is being detained in a place of secure temporary detention and who is brought before a youth justice court for a review of an order for detention made under the *Youth Criminal Justice Act* (Canada) or the *Criminal Code* (Canada) may request that the youth justice court review the level of their detention.

#### **Powers of youth justice court**

(6) The youth justice court conducting a review of an order for detention may confirm the provincial director's decision under subsection (2) or may direct that the young person be transferred to a place of open temporary detention.

#### **Application for return to secure temporary detention**

(7) A provincial director may apply to a youth justice court for a review of an order directing that a young person be transferred to a place of open temporary detention under subsection (6) on the basis that it is necessary that the young person be returned to a place of secure temporary detention because of either of the following:

1. A material change in the circumstances.
2. Any other grounds that the provincial director considers appropriate.

#### **Powers of youth justice court**

(8) The youth justice court conducting a review of an order transferring a young person to a place of open temporary detention may confirm the court's decision under subsection (6) or may direct that the young person be transferred to a place of secure temporary detention.

### **CUSTODY**

#### **Detention under *Provincial Offences Act***

##### **Pre-trial detention**

**146** (1) Where a young person is ordered to be detained in custody under subsection 150 (4) (order for detention) or 151 (2) (further orders) of the *Provincial Offences Act*, the young person shall be detained in a place of temporary detention.

##### **Open custody for provincial offences**

- (2) Where a young person is sentenced to a term of imprisonment under the *Provincial Offences Act*,
  - (a) the term of imprisonment shall be served in a place of open custody, subject to subsections (3) and (4);

- (b) section 91 (reintegration leave) of the *Youth Criminal Justice Act* (Canada) applies with necessary modifications; and
- (c) sections 28 (remission) and 28.1 (determinations of remission) and Part III (Ontario Parole and Earned Release Board) of the *Ministry of Correctional Services Act* apply with necessary modifications.

#### **Transfer to place of secure custody**

(3) Where a young person is placed in open custody under clause (2) (a), the provincial director may transfer the young person to a place of secure custody if, in the opinion of the provincial director, the transfer is necessary for the safety of the young person or the safety of others in the place of open custody.

#### **Concurrent terms**

(4) Where a young person is committed to custody under the *Youth Criminal Justice Act* (Canada) and is sentenced concurrently to a term of imprisonment under the *Provincial Offences Act*, the term of imprisonment under the *Provincial Offences Act* shall be served in the same place as the sentence under the *Youth Criminal Justice Act* (Canada).

#### **Young persons in open custody**

**147** Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d) of the *Provincial Offences Act*, to be served in open custody as set out in section 103 of that Act,

- (a) the young person shall be held in a place of open custody specified by a provincial director; and
- (b) the provisions of section 91 (reintegration leave) of the *Youth Criminal Justice Act* (Canada) apply with necessary modifications.

### **CUSTODY REVIEW BOARD**

#### **Custody Review Board**

**148** (1) The Custody Review Board is continued under the name Custody Review Board in English and Commission de révision des placements sous garde in French and shall have the powers and duties given to it by this Part and the regulations.

#### **Members**

(2) The Board shall be composed of the prescribed number of members who shall be appointed by the Lieutenant Governor in Council.

#### **Chair and vice-chairs**

(3) The Lieutenant Governor in Council may appoint a member of the Board as chair and may appoint one or more other members as vice-chairs.

#### **Quorum**

(4) The prescribed number of members of the Board are a quorum.

#### **Remuneration**

(5) The chair and vice-chairs and the other members of the Board shall be paid the remuneration determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

#### **Duties of Board**

(6) The Board shall conduct reviews under section 149 and perform such other duties as are assigned to it by the regulations.

#### **Application to Board**

**149** (1) A young person may apply to the Board for a review of,

- (a) the particular place where the young person is held or to which the young person has been transferred;
- (b) a provincial director's refusal to authorize the young person's reintegration leave under section 91 of the *Youth Criminal Justice Act* (Canada); or
- (c) the young person's transfer from a place of open custody to a place of secure custody under subsection 24.2 (9) of the *Young Offenders Act* (Canada) in accordance with section 88 of the *Youth Criminal Justice Act* (Canada).

#### **30 day time limit**

(2) An application under subsection (1) must be made within 30 days of the decision, placement or transfer, as the case may be.

#### **Duty of Board to conduct review**

(3) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing.



### **Advise whether hearing to be held**

(4) The Board shall advise the young person whether it intends to hold a hearing or not within 10 days of receiving the young person's application.

### **Procedure**

(5) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (3).

### **Time period for review**

(6) The Board shall complete its review and make a determination within 30 days of receiving a young person's application, unless,

- (a) the Board holds a hearing with respect to the application; and
- (b) the young person and the provincial director whose decision is being reviewed consent to a longer period for the Board's determination.

### **Board's recommendations**

(7) After conducting a review under subsection (3), the Board may,

- (a) recommend to the provincial director,
  - (i) where the Board is of the opinion that the place where the young person is held or to which the young person has been transferred is not appropriate to meet the young person's needs, that the young person be transferred to another place,
  - (ii) that the young person's reintegration leave be authorized under section 91 of the *Youth Criminal Justice Act* (Canada), or
  - (iii) where the young person has been transferred as described in clause (1) (c), that the young person be returned to a place of open custody; or
- (b) confirm the decision, placement or transfer.

## **APPREHENSION OF YOUNG PERSONS WHO ARE ABSENT FROM CUSTODY WITHOUT PERMISSION**

### **Apprehension**

#### **Apprehension of young person absent from place of temporary detention**

**150** (1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the *Youth Criminal Justice Act* (Canada) or the *Provincial Offences Act* in a place of temporary detention has left the place without the consent of the person in charge and fails or refuses to return there may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of temporary detention.

#### **Apprehension of young person absent from place of open custody**

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 147,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to the place of open custody upon completion of a period of reintegration leave under clause 147 (b),

may apprehend the young person with or without a warrant and take the young person or arrange for the young person to be taken to a place of open custody or a place of temporary detention.

#### **Young person to be returned within 48 hours**

(3) A young person who is apprehended under this section shall be returned to the place from which the young person is absent within 48 hours after being apprehended unless the provincial director detains the young person in secure temporary detention under paragraph 2 of subsection 145 (2).

### **Warrant to apprehend young person**

(4) A justice of the peace who is satisfied on the basis of a sworn information that there are reasonable and probable grounds to believe that a young person held in a place of temporary detention or open custody,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to a place of open custody upon completion of a period of reintegration leave under clause 147 (b),

may issue a warrant authorizing a peace officer, the person in charge of the place of temporary detention or open custody or that person's delegate to apprehend the young person.

**Authority to enter, etc.**

(5) Where a person authorized to apprehend a young person under subsection (1) or (2) believes on reasonable and probable grounds that a young person referred to in the relevant subsection is on any premises, the person may with or without a warrant enter the premises, by force, if necessary, and search for and remove the young person.

**Regulations regarding exercise of power of entry**

(6) A person authorized to enter premises under subsection (5) shall exercise the power of entry in accordance with the regulations.

## INSPECTIONS AND INVESTIGATIONS

**Inspections and investigations**

**151** (1) The Minister may designate any person to conduct such inspections or investigations as the Minister may require in connection with the administration of this Part.

**Dismissal for cause for obstruction of inspection**

(2) Any person employed in the Ministry who obstructs an inspection or investigation or withholds, destroys, conceals or refuses to furnish any information or thing required for purposes of an inspection or investigation may be dismissed for cause from employment.

## SEARCHES

**Permissible searches**

**152** (1) The person in charge of a place of open custody, of secure custody or of temporary detention may authorize a search, to be carried out in accordance with the regulations, of the following:

1. The place of open custody, of secure custody or of temporary detention.
2. The person of any young person or any other person on the premises of the place of open custody, of secure custody or of temporary detention.
3. The property of any young person or any other person on the premises of the place of open custody, of secure custody or of temporary detention.
4. Any vehicle entering or on the premises of the place of open custody, of secure custody or of temporary detention.

**Contraband**

(2) Any contraband found during a search may be seized and disposed of in accordance with the regulations.

**Meaning of contraband**

(3) For the purposes of subsection (2),

"contraband" means,

- (a) anything that a young person is not authorized to have,
- (b) anything that a young person is authorized to have but in a place where they are not authorized to have it, and
- ~~—(c) anything that a young person is authorized to have but in a quantity in which they are not authorized to have it, and~~
- (d) anything that a young person is authorized to have but that is being used for a purpose for which they are not authorized to use it.

## MECHANICAL RESTRAINTS

**Mechanical restraints**

**Limits on use**

**153** (1) The person in charge of a place of secure custody or of secure temporary detention shall ensure that no young person who is detained in the place of secure custody or of secure temporary detention is,

- (a) restrained by the use of mechanical restraints, other than in accordance with this section and the regulations;
- (b) restrained by the use of mechanical restraints as a means of punishment.

**Conditions for use**

(2) The person in charge of a place of secure custody or of secure temporary detention may authorize the use of mechanical restraints on a young person who is detained in the place of secure custody or of secure temporary detention only if all of the following are satisfied:

1. There is an imminent risk, if mechanical restraints were not used, that:

- i. the young person or another person would suffer physical injury,
  - ii. the young person would escape the place of secure custody or of secure temporary detention, or
  - iii. the young person would cause significant property damage.
2. Alternatives to the use of mechanical restraints would not be, or have not been, effective to reduce or eliminate the risk referred to in paragraph 1.
3. The use of the mechanical restraints is reasonably necessary to reduce or eliminate the risk referred to in paragraph 1.

### **Exception for transportation**

(3) Despite subsection (2), mechanical restraints may be used on a young person who is detained in a place of secure custody or of secure temporary detention where it is reasonably necessary for the transportation of the young person to another place of custody or detention, or to or from court or the community.

## **PART VII EXTRAORDINARY MEASURES**

### **Definitions**

**154** In this Part,

“administrator” means the person in charge of a secure treatment program; (“administrateur”)

“intrusive procedure” means,

- (a) the use of mechanical restraints,
- (b) an aversive stimulation technique, or
- (c) any other procedure that is prescribed as an intrusive procedure; (“technique d’ingérence”)

“mental disorder” means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person’s capacity to make reasoned judgments; (“trouble mental”)

“psychotropic drug” means a drug or combination of drugs prescribed as a psychotropic drug; (“psychotrope”)

“secure de-escalation room” means a locked room approved under subsection 170 (1) for use for the ~~secure de-escalation of situations and behaviour~~ de-escalation of situations and behaviour involving children or young persons; (“pièce de désescalade sous clé”)

“secure treatment program” means a program established or approved by the Minister under subsection 155 (1). (“programme de traitement en milieu fermé”)

## **SECURE TREATMENT PROGRAMS**

### **Secure treatment programs**

#### **Minister may establish or approve programs**

**155** (1) The Minister may,

- (a) establish, operate and maintain; or
- (b) approve,

programs for the treatment of children with mental disorders, in which continuous restrictions are imposed on the liberty of the children.

### **Terms and conditions**

(2) The Minister may impose terms and conditions on an approval given under subsection (1) and may vary or amend the terms and conditions or impose new terms and conditions at any time.

### **Admission of children**

(3) No child shall be admitted to a secure treatment program except by a court order under section 161 (commitment to secure treatment program) or under section 168 (emergency admission).

### **Locking up permitted**

**156** The premises of a secure treatment program may be locked for the detention of children.

### **Mechanical restraints permitted**

**157** (1) Subject to subsection (3), an administrator may use and permit the use of mechanical restraints on a child as a means of controlling the child’s behaviour.



**Consent not required**

(2) An administrator is not required to obtain the consent of or on behalf of the child before using mechanical restraints under this section.

**Limitations**

- (3) An administrator shall ensure that mechanical restraints are not used on a child in a secure treatment program except,
- (a) in accordance with this Part, the policies established under subsection (4) and the regulations; and
  - (b) in an emergency situation under the common law duty of a caregiver to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or others.

**Policy**

- (4) A service provider that is approved to provide a secure treatment program shall,
- (a) establish a policy on the use of mechanical restraints that complies with this Act and the regulations; and
  - (b) ensure that the administrator and the employees of the program comply with the policy.

**COMMITMENT TO SECURE TREATMENT****Application for order for child's commitment**

**158** (1) Any one of the following persons may, with the administrator's written consent, apply to the court for an order for the child's commitment to a secure treatment program:

1. Where the child is younger than 16,
  - i. the child's parent,
  - ii. a person other than an administrator who is caring for the child, if the child's parent consents to the application, or
  - iii. a society that has custody of the child under an order made under Part V (Child Protection).
2. Where the child is 16 or older,
  - i. the child,
  - ii. the child's parent, if the child consents to the application,
  - iii. a society that has custody of the child under an order made under Part V (Child Protection), if the child consents to the application, or
  - iv. a physician.

**Time for hearing**

(2) Where an application is made under subsection (1), the court shall deal with the matter within 10 days of the making of an order under subsection (6) (legal representation) or, where no such order is made, within 10 days of the making of the application.

**Adjournments**

(3) The court may adjourn the hearing of an application but shall not adjourn it for more than 30 days unless the applicant and the child consent to the longer adjournment.

**Interim order**

(4) Where a hearing is adjourned, the court may make a temporary order for the child's commitment to a secure treatment program if the court is satisfied that the child meets the criteria for commitment set out in clauses 161 (1) (a) to (f) and, where the child is younger than 12, the Minister consents to the child's admission.

**Evidence on adjournments**

(5) For the purpose of subsection (4), the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances.

**Legal representation of child**

(6) Where an application is made under subsection (1) in respect of a child who does not have legal representation, the court shall, as soon as practicable and in any event before the hearing of the application, direct that legal representation be provided for the child.

### **Hearing private**

(7) A hearing under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

### **Child entitled to be present**

(8) The child who is the subject of an application under subsection (1) is entitled to be present at the hearing unless,

- (a) the court is satisfied that being present at the hearing would cause the child emotional harm; or
- (b) the child, after obtaining legal advice, consents in writing to the holding of the hearing without the child's presence.

### **Court may require child's presence**

(9) The court may require a child who has consented to the holding of the hearing without the child being present under clause (8) (b) to be present at all or part of the hearing.

### **Oral evidence**

**159** (1) Where an application is made under subsection 158 (1), the court shall deal with the matter by holding a hearing and shall hear oral evidence unless the child, after obtaining legal advice, consents in writing to the making of an order under subsection 161 (1) without the hearing of oral evidence, and the consent is filed with the court.

### **Court may hear oral evidence despite consent**

(2) The court may hear oral evidence although the child has given a consent under subsection (1).

### **Time limitation**

(3) A child's consent under subsection (1) is not effective for more than the period referred to in subsection 162 (1) (period of commitment).

### **Assessment**

**160** (1) The court may, at any time after an application is made under subsection 158 (1), order that the child attend within a specified time for an assessment before a specified person who is qualified, in the court's opinion, to perform an assessment to assist the court to determine whether the child should be committed to a secure treatment program and has consented to perform the assessment.

### **Report**

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than 30 days unless the court is of the opinion that a longer assessment period is necessary.

### **Who may not perform assessment**

(3) The court shall not order an assessment to be performed by a person who provides services in the secure treatment program to which the application relates.

### **Copies of report**

(4) The court shall provide a copy of the report to,

- (a) the applicant;
- (b) the child, subject to subsection (6);
- (c) the child's lawyer;
- (d) a parent appearing at the hearing;
- (e) a society that has custody of the child under an order made under Part V (Child Protection);
- (f) the administrator; and
- (g) in the case of a First Nations, Inuk or Métis child, the persons described in clauses (a), (b), (c), (d), (e) and (f) and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **Same**

(5) The court may cause a copy of the report to be given to a parent who does not attend the hearing but is, in the court's opinion, actively interested in the proceedings.

### **Court may withhold report from child**

(6) The court may withhold all or part of the report from the child where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm.

**Commitment to secure treatment: criteria**

**161** (1) The court may order that a child be committed to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, within the 45 days immediately preceding,
  - (i) the application under subsection 158 (1),
  - (ii) the child's detention or custody under the *Youth Criminal Justice Act* (Canada) or under the *Provincial Offences Act*, or
  - (iii) the child's admission to a psychiatric facility under the *Mental Health Act* as an involuntary patient, caused or attempted to cause serious bodily harm to themselves or another person;
- (c) the child has,
  - (i) within the 12 months immediately preceding the application, but on another occasion than that referred to in clause (b), caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to themselves or another person, or
  - (ii) in committing the act or attempt referred to in clause (b), caused or attempted to cause a person's death;
- (d) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to themselves or another person;
- (e) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (f) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

**Where child younger than 12**

(2) Where the child is younger than 12, the court shall not make an order under subsection (1) unless the Minister consents to the child's commitment.

**Additional requirement where applicant is physician**

(3) Where the applicant is a physician, the court shall not make an order under subsection (1) unless the court is satisfied that the applicant believes the criteria set out in that subsection are met.

**Period of commitment**

**162** (1) The court shall specify in an order under subsection 161 (1) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

**Where society is applicant**

(2) Where a child is committed to a secure treatment program on a society's application and the period specified in the court's order is greater than 60 days, the child shall be released on a day 60 days after the child's admission to the secure treatment program unless before that day,

- (a) the child's parent consents to the child's commitment for a longer period; or
- (b) the child is made the subject of an order for interim society care under paragraph 2 of subsection 98 (1) or for extended society care under paragraph 3 of subsection 98 (1) or clause 113 (1) (c),

but in no case shall the child be committed to the secure treatment program for longer than the period specified under subsection (1).

**How time calculated**

(3) In the calculation of a child's period of commitment, time spent in the secure treatment program before an order has been made under section 161 (commitment) or pending an application under section 164 (extension) shall be counted.

**Where order expires after 18th birthday**

(4) A person who is the subject of an order made under subsection 161 (1) or 164 (5) may be kept in the secure treatment program after turning 18, until the order expires.

**Reasons, plans, etc.**

**163** (1) Where the court makes an order under subsection 161 (1) or 164 (5), the court shall give,

- (a) reasons for its decision;



- (b) a statement of the plan, if any, for the child's care on release from the secure treatment program; and
- (c) a statement of the less restrictive alternatives considered by the court, and the reasons for rejecting them.

#### **Plan for care on release**

(2) Where no plan for the child's care on release from the secure treatment program is available at the time of the order, the administrator shall, within 90 days of the date of the order, prepare such a plan and file it with the court.

### **EXTENSION OF PERIOD OF COMMITMENT**

#### **Extension**

**164** (1) Where a child is the subject of an order made under subsection 161 (1) (commitment) or subsection (5),

- (a) a person referred to in subsection 158 (1), with the administrator's written consent; or
- (b) the administrator, with a parent's written consent or, where the child is in a society's lawful custody, the society's consent,

may, before the expiry of the period of commitment, apply for an order extending the child's commitment to the secure treatment program.

#### **Same**

(2) Where a person is kept in the secure treatment program under subsection 162 (4) after turning 18,

- (a) the person, with the written consent of the administrator;
- (b) the person's parent, with the written consent of the person and the administrator;
- (c) a physician, with the written consent of the administrator and the person; or
- (d) the administrator, with the written consent of the person,

may, before the expiry of the period of commitment, apply for one further order extending the person's commitment to the secure treatment program.

#### **Person may be kept in program while application pending**

(3) Where an application is made under subsection (1) or (2), the person may be kept in the secure treatment program until the application is disposed of.

#### **ss. 158 (3), (6-9), 159, 160 apply**

(4) Subsections 158 (3), (6), (7), (8) and (9) (hearing) and sections 159 (waive oral evidence) and 160 (assessment) apply with necessary modifications to an application made under subsection (1) or (2).

#### **Criteria for extension**

(5) The court may make an order extending a child's commitment to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to themselves or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances;
- (d) the child is receiving the treatment proposed at the time of the original order under subsection 161 (1), or other appropriate treatment; and
- (e) there is an appropriate plan for the child's care on release from the secure treatment program.

#### **Period of extension**

(6) The court shall specify in an order under subsection (5) the period not exceeding 180 days for which the child shall be committed to the secure treatment program.

### **RELEASE BY ADMINISTRATOR**

#### **Release**

#### **Unconditional release by administrator**

**165** (1) The administrator may release a child from a secure treatment program unconditionally where the administrator,

- (a) has given the person with lawful custody of the child reasonable notice of the intention to release the child; and

- (b) is satisfied that,
  - (i) the child no longer requires the secure treatment program, and
  - (ii) there is an appropriate plan for the child's care on release from the secure treatment program.

#### **Conditional release**

(2) The administrator may release a child from a secure treatment program temporarily for medical or compassionate reasons, or for a trial placement in an open setting, for such period and on such terms and conditions as the administrator determines.

#### **Administrator may release despite court order**

(3) Subsections (1) and (2) apply despite an order made under subsection 161 (1) (commitment) or 164 (5) (extension).

### **REVIEW OF COMMITMENT**

#### **Review of commitment**

**166** (1) Any one of the following persons may apply to the court for an order terminating an order made under subsection 161 (1) (commitment) or 164 (5) (extension):

1. The child, where the child is 12 or older.
2. The child's parent.
3. The society having care, custody or supervision of the child.

#### **ss. 158 (3), (6-9), 159, 160 apply**

(2) Subsections 158 (3), (6), (7), (8) and (9) (hearing) and sections 159 (waive oral evidence) and 160 (assessment) apply with necessary modifications to an application made under subsection (1).

#### **Termination of order**

- (3) The court shall make an order terminating a child's commitment unless the court is satisfied that,
- (a) the child has a mental disorder;
  - (b) the secure treatment program would continue to be effective to prevent the child from causing or attempting to cause serious bodily harm to himself or another person;
  - (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances; and
  - (d) the child is receiving the treatment proposed at the time of the most recent order under subsection 161 (1) or 164 (5), or other appropriate treatment.

#### **Same**

(4) In making an order under subsection (3), the court shall consider whether there is an appropriate plan for the child's care on release from the secure treatment program.

#### **ss. 164 (3-6), 165, 166 apply**

**167** Subsections 164 (3), (4), (5) and (6) and sections 165 and 166 apply with necessary modifications to a person who is 18 or older and committed to a secure treatment program as if the person were a child.

### **EMERGENCY ADMISSION**

#### **Emergency admission**

**168** (1) Any one of the following persons may apply to the administrator for the emergency admission of a child to a secure treatment program:

1. Where the child is younger than 16,
  - i. the child's parent,
  - ii. a person who is caring for the child with a parent's consent,
  - ~~iii. a child protection worker who has apprehended the child under section 80, or~~
  - ~~iii. a child protection worker who brought the child to a place of safety under section 80, or~~
  - iv. a society that has custody of the child under an order made under Part V (Child Protection).
2. Where the child is 16 or older,

- i. the child,
- ii. the child's parent, if the child consents to the application,
- iii. a society that has custody of the child under an order made under Part V (Child Protection), if the child consents to the application, or
- iv. a physician.

#### **Criteria for admission**

(2) The administrator may admit a child to the secure treatment program on an application under subsection (1) for a period not to exceed 30 days where the administrator believes on reasonable grounds that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself or another person;
- (c) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself or another person;
- (d) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (e) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

#### **Admission on consent**

(3) The administrator may admit the child under subsection (2) although the criterion set out in clause (2) (b) is not met, where,

- (a) the other criteria set out in subsection (2) are met;
- (b) the child, after obtaining legal advice, consents to the admission; and
- (c) if the child is younger than 16, the child's parent or, where the child is in a society's lawful custody, the society consents to the child's admission.

#### **Where child younger than 12**

(4) Where the child is younger than 12, the administrator shall not admit the child under subsection (2) unless the Minister consents to the child's admission.

#### **Additional requirement where applicant is physician**

(5) Where the applicant is a physician, the administrator shall not admit the child under subsection (2) unless the administrator is satisfied that the applicant believes the criteria set out in that subsection are met.

#### **Notices required**

(6) The administrator shall ensure that within 24 hours after a child is admitted to a secure treatment program under subsection (2),

- (a) the child is given written notice of the child's right to a review under subsection (9); and
- (b) the Provincial Advocate for Children and Youth and the Children's Lawyer are given notice of the admission.

#### **Mandatory advice**

~~(7) The Provincial Advocate for Children and Youth shall ensure that as soon as possible after the notice is received a person who is not employed by the secure treatment facility explains to the child the child's right to a review in language suitable for the child's level of understanding.~~

#### **Mandatory advice**

~~(7) The Provincial Advocate for Children and Youth shall ensure that as soon as possible after the notice is received a person who is not employed to provide services in the secure treatment program explains to the child the child's right to a review in language suitable to the child's understanding.~~

#### **Children's Lawyer to ensure child represented**

(8) The Children's Lawyer shall represent the child at the earliest possible opportunity and in any event within five days after receiving a notice under subsection (6) unless the Children's Lawyer is satisfied that another person will provide legal representation for the child within that time.



**Application for review**

(9) Where a child is admitted to a secure treatment program under this section, any person, including the child, may apply to the Board for an order releasing the child from the secure treatment program.

**Child may be kept in program while application pending**

(10) Where an application is made under subsection (9), the child may be kept in the secure treatment program until the application is disposed of.

**Procedure**

(11) Subsections 158 (7), (8) and (9) (hearing) and section 159 (waive oral evidence) apply with necessary modifications to an application made under subsection (9).

**Time for review**

(12) Where an application is made under subsection (9), the Board shall dispose of the matter within five days of the making of the application.

**Order**

(13) The Board shall make an order releasing the child from the secure treatment program unless the Board is satisfied that the child meets the criteria for emergency admission set out in clauses (2) (a) to (e).

**POLICE ASSISTANCE****Powers of peace officers, period of commitment****Police may take child for secure treatment**

**169** (1) A peace officer may take a child to a place where there is a secure treatment program,

- (a) for emergency admission, at the request of an applicant referred to in subsection 168 (1); or
- (b) where an order for the child's commitment to the secure treatment program has been made under section 161.

**Apprehension of child who leaves**

(2) Where a child who has been admitted to a secure treatment program leaves the facility in which the secure treatment program is located without the consent of the administrator, a peace officer may apprehend the child with or without a warrant and return the child to the facility.

**Period of commitment**

(3) Where a child is returned to a facility under subsection (2), the time that the child was absent from the facility shall not be taken into account in calculating the period of commitment.

**SECURE DE-ESCALATION****Director's approval**

**170** (1) A Director may approve a locked room that complies with the prescribed standards and is located in premises where a service is provided, for use for the ~~secure~~ de-escalation of situations and behaviour involving children or young persons, on such terms and conditions as the Director determines.

**Withdrawal of approval**

(2) Where a Director is of the opinion that a secure de-escalation room is unnecessary or is being used in a manner that contravenes this Part or the regulations, the Director may withdraw the approval given under subsection (1) and shall give the affected service provider notice of the decision, with reasons.

**Secure de-escalation**

**171** (1) No service provider or foster parent shall place in a locked room a child or young person who is in the service provider's or foster parent's care or permit the child or young person to be placed in a locked room, except in accordance with this section and the regulations.

**Secure treatment, secure custody and secure temporary detention**

(2) Subsection (1) does not prohibit the routine locking at night of rooms in the premises of secure treatment programs or in places of secure custody and places of secure temporary detention under Part VI (Youth Justice).

**Criteria for use of a secure de-escalation room**

(3) A child or young person may be placed in a secure de-escalation room where,

- (a) in the service provider's opinion,
  - (i) the child's or young person's conduct indicates that the child or young person is likely, in the immediate future, to cause serious property damage or to cause another person serious bodily harm, and

- (ii) no less restrictive method of restraining the child or young person is practicable; and
- (b) where the child is younger than 12, a Director gives permission for the child to be placed in a secure de-escalation room because of exceptional circumstances.

#### **One-hour limit**

(4) A child or young person who is placed in a secure de-escalation room shall be released within one hour unless the person in charge of the premises approves the child's or young person's longer stay in a secure de-escalation room in writing and records the reasons for not restraining the child or young person by a less restrictive method.

#### **Continuous observation**

(5) Subject to subsection (9), the service provider shall ensure that a child or young person who is placed in a secure de-escalation room is continuously observed by a responsible person.

#### **Review**

(6) Where a child or young person is kept in a secure de-escalation room for more than one hour, the person in charge of the premises shall review the child's or young person's placement in a secure de-escalation room at prescribed intervals.

#### **Release**

(7) A child or young person who is placed in a secure de-escalation room shall be released as soon as the person in charge is satisfied that the child or young person is not likely to cause serious property damage or serious bodily harm in the immediate future.

#### **Maximum periods**

(8) Subject to subsection (9), in no event shall a child or young person be kept in a secure de-escalation room for a period or periods that exceed an aggregate of eight hours in a given 24-hour period or an aggregate of 24 hours in a given week.

#### **Exception**

~~(9) A service provider is not required to comply with subsections (5) and (8) with respect to a young person who is 16 or older and who is held in a place of secure custody or of secure temporary detention, but a service provider shall comply with the prescribed standards and procedures in respect of such young persons who are held in such places.~~

#### **Exception**

(9) A service provider is not required to comply with subsections (5) and (8) with respect to a young person who is 16 or older and who is held in a place of secure custody or of secure temporary detention, but a service provider shall comply with the following standards and procedures and with any additional standards and procedures that may be prescribed:

1. The young person must be observed every 15 minutes by a responsible person and these observations must be recorded in the young person's case record.
2. The service provider must determine whether, given the needs of the young person, the young person should be observed at regular intervals that are more frequent than every 15 minutes, and, if that determination is made, the young person must be observed by a responsible person at the more frequent intervals determined by the service provider and these observations must be recorded in the young person's case record.
3. The young person must not be kept in a secure de-escalation room for a continuous period in excess of 24 hours or for a period or periods that exceed an aggregate of 24 hours in a seven-day period.
4. Despite paragraph 3, the service provider may extend a young person's placement in a secure de-escalation room for a continuous period beyond 24 hours or for an aggregate of more than 24 hours in a given seven-day period, if the provincial director approves the extension.
5. The provincial director may approve the extension of the placement of a young person in a secure de-escalation room beyond 24 continuous hours or beyond an aggregate of 24 hours in a given seven-day period if the provincial director has reasonable and probable grounds to believe that the young person's continued placement in a secure de-escalation room is necessary for the safety of staff or young persons in the facility.

#### **Review of use of secure de-escalation**

**172** A person in charge of premises containing a secure de-escalation room shall review,

- (a) the need for the secure de-escalation room; and
- (b) the prescribed matters,

every three months or, in the case of secure custody or secure temporary detention, every six months from the date on which the secure de-escalation room is approved under subsection 170 (1), shall make a written report of each review to a Director and shall make such additional reports as are prescribed.

## PSYCHOTROPIC DRUGS

### Consent required for use of psychotropic drugs

**173** A service provider shall not administer or permit the administration of a psychotropic drug to a child or young person in the service provider's care without a consent in accordance with the *Health Care Consent Act, 1996*.

## PROFESSIONAL ADVISORY BOARD

### Professional Advisory Board

**174** (1) The Minister may establish a Professional Advisory Board, composed of physicians and other professionals who,

- (a) have special knowledge in the use of intrusive procedures and psychotropic drugs;
- (b) have demonstrated an informed concern for the welfare and interests of children; and
- (c) are not employed in the Ministry.

### Chair

(2) The Minister shall appoint one of the members of the Professional Advisory Board as its chair.

### Duties of Board

(3) The Professional Advisory Board shall, at the Minister's request,

- (a) advise the Minister on prescribing procedures as intrusive procedures;
- (b) investigate and review the use of intrusive procedures and psychotropic drugs and make recommendations to the Minister; and
- (c) review the practices and procedures of service providers with respect to,
  - (i) secure de-escalation,
  - (ii) intrusive procedures, and
  - (iii) psychotropic drugs,

and make recommendations to the Minister.

### Request for review

**175** Any person may request that the Minister refer the matter of the use of a secure de-escalation room or an intrusive procedure in respect of a child or young person, or the administration of a psychotropic drug to a child or young person, to the Professional Advisory Board for investigation and review.

## PART VIII ADOPTION AND ADOPTION LICENSING

### INTERPRETATION

### Interpretation

**176** (1) In this Part,

"birth parent" means a person who satisfies the prescribed criteria; ("parent de naissance")

"birth relative" means,

- (a) in respect of a child who has not been adopted, a relative of the child, and
- (b) in respect of a child who has been adopted, a person who would have been a relative of the child if the child had not been adopted; ("membre de la parenté de naissance")

"birth sibling" means, in respect of a person, a child of the same birth parent as the person, and includes a child adopted by the birth parent and a person whom the birth parent has demonstrated a settled intention to treat as a child of their family; ("frère ou soeur de naissance")

"openness agreement" means an agreement referred to in section 209; ("accord de communication")

"openness order" means an order made by a court in accordance with this Act for the purposes of facilitating communication or maintaining a relationship between the child and,

- (a) a birth parent, birth sibling or birth relative of the child,
- (b) a person with whom the child has a significant relationship or emotional tie, including a foster parent of the child or a member of the child's extended family or community, or



(c) in the case of a First Nations, Inuk or Métis child,

- (i) a person described in clause (a) or (b), or
- (ii) a member of the child's bands and First Nations, Inuit or Métis communities who may not have had a significant relationship or emotional tie with the child in the past but will help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community; ("ordonnance de communication")

"spouse" has the same meaning as in Parts I and II of the *Human Rights Code*. ("conjoint")

#### **Best interests of child**

(2) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that the person considers relevant:

- 1. The child's views and wishes, given due weight in accordance with the child's age and maturity.
- 2. The child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
- 3. The child's physical, mental and emotional level of development.
- 4. The child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity, and gender expression.
- 5. The child's cultural and linguistic heritage.
- 6. The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family.
- 7. The child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community.
- 8. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.
- 9. The effects on the child of delay in the disposition of the case.
- 10. Any other relevant circumstance.

#### **First Nations, Inuk or Métis child**

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is a First Nations, Inuk or Métis child, the person shall also take into consideration the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community.

#### **Best interests of child**

(2) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,

- (a) consider the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained;
- (b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and
- (c) consider any other circumstance of the case that the person considers relevant, including,
  - (i) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
  - (ii) the child's physical, mental and emotional level of development,
  - (iii) the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
  - (iv) the child's cultural and linguistic heritage,
  - (v) the importance for the child's development of a positive relationship with a parent and a secure place as a member of a family,
  - (vi) the child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community,
  - (vii) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity, and
  - (viii) the effects on the child of delay in the disposition of the case.

## CONSENT TO ADOPTION

### Consents

**177 (1)** In this section,

“parent”, when used in reference to a child, means each of the following persons, but does not include a licensee or a foster parent:

1. A parent of the child under section 6, 8, 9, 10, 11 or 13 of the *Children's Law Reform Act*.
2. In the case of a child conceived through sexual intercourse, an individual described in one of paragraphs 1 to 5 of subsection 7 (2) of the *Children's Law Reform Act*, unless it is proved on a balance of probabilities that the sperm used to conceive the child did not come from the individual.
3. An individual who has been found or recognized by a court of competent jurisdiction outside Ontario to be a parent of the child.
4. In the case of an adopted child, a parent of the child as provided for under section 214 or 215 of this Act.
5. An individual who has lawful custody of the child.
6. An individual who, during the 12 months before the child is placed for adoption under this Part, has demonstrated a settled intention to treat the child as a child of the individual's family, or has acknowledged parentage of the child and provided for the child's support.
7. An individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child.
8. An individual who acknowledged parentage of the child by filing a statutory declaration under section 12 of the *Children's Law Reform Act* as it read before the day subsection 1 (1) of the *All Families Are Equal Act (Parentage and Related Registrations Statute Law Amendment)*, 2016 came into force.

### Consent of parent, etc.

(2) An order for the adoption of a child who is younger than 16, or is 16 or older but has not withdrawn from parental control, shall not be made without,

- (a) the written consent of every parent; or
- (b) where the child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), the written consent of a Director.

### Same

(3) A consent under clause (2) (a) shall not be given before the child is seven days old.

### Same

(4) Where a child is being placed for adoption by a society or licensee, a consent under clause (2) (a) shall not be given until,

- (a) the society or licensee has advised the parent of the parent's right,
  - (i) to withdraw the consent under subsection (8), and
  - (ii) to be informed, on their request, whether an adoption order has been made in respect of the child;
- (b) the society or licensee has advised the parent of such other matters as may be prescribed; and
- (c) the society or licensee has given the parent an opportunity to seek counselling and independent legal advice with respect to the consent.

### Custody of child

(5) Where,

- (a) a child is being placed for adoption by a society or licensee;
- (b) every consent required under subsection (2) has been given and has not been withdrawn under subsection (8); and
- (c) the 21-day period referred to in subsection (8) has expired,

the rights and responsibilities of the child's parents with respect to the child's custody, care and control are transferred to the society or licensee, until the consent is withdrawn under subsection 179 (1) (late withdrawal with leave of court) or an order is made for the child's adoption under section 196.

### Consent of person to be adopted

(6) An order for the adoption of a person who is seven or older shall not be made without the person's written consent.

### **Same**

(7) A consent under subsection (6) shall not be given until the person has had an opportunity to obtain counselling and independent legal advice with respect to the consent.

### **Withdrawal of consent**

(8) A person who gives a consent under subsection (2) or (6) may withdraw it in writing within 21 days after the consent is given and where that person had custody of the child immediately before giving the consent, the child shall be returned to that person as soon as the consent is withdrawn.

### **Dispensing with person's consent**

(9) The court may dispense with a person's consent required under subsection (6) where the court is satisfied that,

- (a) obtaining the consent would cause the person emotional harm; or
- (b) the person is not able to consent because of a developmental disability.

### **Consent of applicant's spouse**

(10) An adoption order shall not be made on the application of a person who is a spouse without the written consent of the other spouse.

### **Consents by minors: role of Children's Lawyer**

(11) Where a person who gives a consent under clause (2) (a) is younger than 18, the consent is not valid unless the Children's Lawyer is satisfied that the consent is fully informed and reflects the person's true wishes.

### **Affidavits of execution**

(12) An affidavit of execution in the prescribed form shall be attached to a consent and a withdrawal of a consent under this section.

### **Form of foreign consents**

(13) A consent required under this section that is given outside Ontario and whose form does not comply with the requirements of subsection (12) and the regulations is not invalid for that reason alone, if its form complies with the laws of the jurisdiction where it is given.

### **Dispensing with consent**

**178** The court may dispense with a consent required under section 177 for the adoption of a child, except the consent of the child or of a Director, where the court is satisfied that,

- (a) it is in the child's best interests to do so; and
- (b) the person whose consent is required has received notice of the proposed adoption and of the application to dispense with consent, or a reasonable effort to give the notice has been made.

### **Late withdrawal of consent**

**179** (1) The court may permit a person who gave a consent to the adoption of a child under section 177 to withdraw the consent after the 21-day period referred to in subsection 177 (8) where the court is satisfied that it is in the child's best interests to do so, and where that person had custody of the child immediately before giving the consent, the child shall be returned to that person as soon as the consent is withdrawn.

### **Exception: child placed for adoption**

(2) Subsection (1) does not apply where the child has been placed with a person for adoption and remains in that person's care.

## **PLACEMENT FOR ADOPTION**

### **Only societies and licensees may place children, etc.**

**180** (1) No person except a society or licensee shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

### **Only societies and certain licensees may bring children into Ontario**

(2) No person except a society or a licensee whose licence contains a term permitting the licensee to act under this subsection shall bring a child who is not a resident of Ontario into Ontario to be placed for adoption.



**Director's approval of proposed placement**

(3) No licensee except a licensee exempted under subsection (6) shall do the following without first obtaining a Director's approval of the proposed placement under section 185:

1. Place a child who is a resident of Canada with another person for adoption.
2. Take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

**Placement of child from outside Canada**

(4) No licensee described in subsection (2) shall bring a child who is not a resident of Canada into Ontario to be placed for adoption without,

- (a) first obtaining a Director's approval of the person with whom the child is to be placed as eligible and suitable to adopt under section 186; and
- (b) after the approval referred to in clause (a) is obtained, obtaining a Director's approval of the proposed placement under section 187.

**Director's approval required**

(5) No person shall receive a child for adoption, except from a society or from a licensee exempted under subsection (6), without first receiving a Director's approval of the placement under subsection 185 (3) or 187 (2), as the case may be.

**Designation of licensee**

(6) A Director may designate a licensee that is an agency as exempt from the requirements of subsection (3).

**Placements to be registered**

(7) A society or licensee who places a child with another person for adoption shall register the placement in the prescribed manner within 30 days after placing the child.

**Same: Director**

(8) A Director who becomes aware of any placement for adoption of a child that has not been registered under subsection (7) shall promptly register the placement in the prescribed manner.

**Exception: family adoptions within Canada, etc.**

- (9) Subsections (1), (2), (3), (5), (7) and (8) do not apply to,
- (a) the placement for adoption of a child with the child's relative, the child's parent or a spouse of the child's parent, if the child to be placed is a resident of Canada and the placement is within Ontario; or
  - (b) the taking or sending of a child out of Ontario for adoption by the child's relative, the child's parent or a spouse of the child's parent, if the placement is within Canada.

**Limitation on placement by society**

**181** A society shall not place a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) for adoption until,

- (a) the time for commencing an appeal of the order has expired; or
- (b) any appeal of the order has been finally disposed of or abandoned.

**Adoption planning**

**182** (1) Nothing in this Act prohibits a society from planning for the adoption of a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) and in respect of whom there is an access order in effect under Part V (Child Protection).

**Openness**

(2) Where a society begins planning for the adoption of a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), the society shall consider the benefits of an openness order or openness agreement in respect of the child.

**First Nations, Inuk or Métis child**

**183** (1) If a society intends to begin planning for the adoption of a First Nations, Inuk or Métis child, the society shall give written notice of its intention to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

### **Care plan proposed by band or community**

(2) If a representative chosen by each of the child's bands or First Nations, Inuit or Métis communities receives notice under subsection (1), each band and community may, within 60 days of the representative receiving the notice,

- (a) prepare its own plan for the care of the child; and
- (b) submit its plan to the society.

### **Condition for placement**

(3) A society shall not place a First Nations, Inuk or Métis child with another person for adoption until,

- (a) at least 60 days after notice is given to a representative chosen by each of the bands and First Nations, Inuit or Métis communities have elapsed; or
- (b) if a band or First Nations, Inuit or Métis community has submitted a plan for the care of the child, the society has considered the plan.

### **First Nations, Inuk or Métis child, openness, etc.**

**184** (1) Where a society begins planning for the adoption of a First Nations, Inuk or Métis child, the society shall consider the importance of developing or maintaining the child's connection to the child's bands and First Nations, Inuit or Métis communities.

### **Openness agreement or openness order**

(2) For the purposes of subsection (1), the society shall include consideration of the benefits of,

- (a) an openness agreement in respect of the child and a member of the child's bands and First Nations, Inuit or Métis communities; or
- (b) where the child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c), an openness order in respect of the child and a representative of the child's bands and First Nations, Inuit or Métis communities.

### **Child from inside Canada: proposed placement**

**185** (1) A licensee who intends to act as described in subsection 180 (3) shall notify a Director of the proposed placement and at the same time provide the Director with a report of an adoption homestudy of the person with whom placement is proposed.

### **Who may make homestudy**

(2) The report of the adoption homestudy shall be prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

### **Review by Director**

(3) The Director shall review the report of the adoption homestudy promptly and,

- (a) approve the proposed placement;
- (b) approve the proposed placement subject to any conditions the Director considers appropriate, including supervision by,
  - (i) a specified society, licensee or person, or
  - (ii) in the case of a placement outside Ontario, a specified child welfare authority recognized in the jurisdiction of the placement or a prescribed person; or
- (c) refuse to approve the proposed placement.

### **Notice**

(4) The Director shall promptly give notice of the approval, the approval subject to conditions or the refusal, as the case may be,

- (a) to the person with whom the placement is proposed; and
- (b) to the licensee.

### **Right to hearing**

(5) When a Director gives notice of a refusal or an approval subject to conditions, the person with whom placement is proposed and the licensee are entitled to a hearing before the Board.

### **Application of other provisions**

(6) Sections 230 (hearings), 231 (review of conditions), 263 (parties) and 264 (appeal) apply to the hearing with necessary modifications and for that purpose references to the Tribunal are deemed to be references to the Board.

**Extension of time**

(7) If the Board is satisfied that there are reasonable grounds for the person with whom placement is proposed or the licensee to apply for an extension of the time fixed for requiring the hearing and for the Board to grant relief, it may,

- (a) extend the time either before or after the expiration of the time; and
- (b) give the directions that it considers proper as a result of extending the time.

**Recording of evidence**

(8) The evidence taken before the Board at the hearing shall be recorded.

**Placement outside Canada**

(9) A Director shall not approve the proposed placement of a child outside Canada unless the Director is satisfied that a prescribed special circumstance justifies the placement.

**Child from outside Canada: homestudy**

**186** (1) A licensee who intends to bring a child who is not a resident of Canada into Ontario to be placed for adoption shall provide the Director with a report of an adoption homestudy of the person with whom placement is proposed to assess the person's eligibility and suitability to adopt.

**Who may make homestudy**

(2) The report of the adoption homestudy shall be prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

**Review by Director**

(3) The Director shall review the report of the adoption homestudy promptly and,

- (a) approve the person unconditionally as eligible and suitable to adopt;
- (b) approve the person subject to any conditions the Director considers appropriate; or
- (c) refuse to approve the person.

**Notice**

(4) The Director shall promptly give notice of the approval, the approval subject to conditions or the refusal, as the case may be,

- (a) to the person who is the subject of the homestudy; and
- (b) to the licensee.

**Right to hearing**

(5) When a Director gives notice of a refusal or an approval subject to conditions, the person who is the subject of the homestudy is entitled to a hearing before the Board.

**Application of other provisions**

(6) The following provisions apply to the hearing:

1. Sections 230 (hearings), 231 (review of conditions), 263 (parties) and 264 (appeal), with necessary modifications and for that purpose references to the Tribunal are deemed to be references to the Board.
2. Subsections 185 (7) (extension of time) and (8) (recording of evidence).

**Child from outside Canada: review of proposed placement**

**187** (1) If a person has been approved or approved subject to conditions as eligible and suitable to adopt under section 186 and a licensee proposes to place a child with the person for adoption, the licensee shall request that a Director review the proposed placement.

**Review by Director**

(2) The Director shall promptly review the proposed placement and,

- (a) approve the proposed placement unconditionally;
- (b) approve the proposed placement subject to any conditions the Director considers appropriate, including supervision by a specified society, licensee or person; or
- (c) refuse to approve the proposed placement.



### **Notice**

(3) The Director shall promptly give notice of the approval, the approval subject to conditions or the refusal, as the case may be,

- (a) to the person with whom the placement is proposed; and
- (b) to the licensee.

### **Right to hearing**

(4) When a Director gives notice of a refusal or an approval subject to conditions, the person with whom the placement is proposed and the licensee are entitled to a hearing before the Board.

### **Application of other provisions**

(5) The following provisions apply to the hearing:

- 1. Sections 230 (hearings), 231 (review of conditions), 263 (parties) and 264 (appeal), with necessary modifications and for that purpose references to the Tribunal are deemed to be references to the Board.
- 2. Subsections 185 (7) (extension of time) and (8) (recording of evidence).

### **Access orders terminate**

**188** (1) When a child is placed for adoption by a society or licensee, every order respecting access to the child is terminated, including an access order made under Part V (Child Protection) in respect of a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c).

### **No interference, etc., with child in placement**

(2) Where a child has been placed for adoption by a society or licensee and no adoption order has been made, no person shall,

- (a) interfere with the child; or
- (b) for the purpose of interfering with the child, visit or communicate with the child or with the person with whom the child has been placed.

## **DECISION TO REFUSE TO PLACE CHILD OR TO REMOVE CHILD AFTER PLACEMENT**

### **Decision of society or licensee**

**189** (1) This section applies if,

- (a) a society decides to refuse an application to adopt a particular child made by a foster parent or other person; or
- (b) a society or licensee decides to remove a child who has been placed with a person for adoption.

### **Notice of decision**

(2) The society or licensee who makes a decision referred to in subsection (1) shall,

- (a) give at least 10 days notice in writing of the decision to the person who applied to adopt the child or with whom the child had been placed for adoption;
- (b) include in the notice under clause (a) notice of the person's right to apply for a review of the decision under subsection (3); and
- (c) in the case of a First Nations, Inuk or Métis child, give the notice required by clauses (a) and (b) and,
  - (i) give at least 10 days notice in writing of the decision to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities, and
  - (ii) after the notice is given, consult with the band or community representatives relating to the planning for the care of the child.

### **Application for review**

(3) A person who receives notice of a decision under subsection (2) may, within 10 days after receiving the notice, apply to the Board in accordance with the regulations for a review of the decision subject to subsection (4).

### **Where no review**

(4) If a society receives an application to adopt a child and, at the time of the application, the child had been placed for adoption with another person, the applicant is not entitled to a review of the society's decision to refuse the application.

**Board hearing**

(5) Upon receipt of an application under subsection (3) for a review of a decision, the Board shall hold a hearing under this section.

**First Nations, Inuk or Métis child**

(6) Upon receipt of an application for review of a decision relating to a First Nations, Inuk or Métis child, the Board shall give notice of the application and of the date of the hearing to a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.

**Practices and procedures**

(7) The *Statutory Powers Procedure Act* applies to a hearing under this section and the Board shall comply with such additional practices and procedures as may be prescribed.

**Composition of Board**

(8) At a hearing under subsection (5), the Board shall be composed of members with the prescribed qualifications and prescribed experience.

**Parties**

(9) The following persons are parties to a hearing under this section:

1. The applicant.
2. The society or licensee.
3. In the case of a First Nations, Inuk or Métis child, the persons described in paragraphs 1 and 2 and a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
4. Any person that the Board adds under subsection (10).

**Additional parties**

(10) The Board may add a person as a party to a review if, in the Board's opinion, it is necessary to do so in order to decide all the issues in the review.

**Board decision**

(11) The Board shall, in accordance with its determination of which action is in the best interests of the child, confirm or rescind the decision under review and shall give written reasons for its decision.

**Subsequent placement**

(12) After a society or licensee has made a decision referred to in subsection (1) in relation to a child, the society shall not place the child for adoption with a person other than the person who has a right to apply for a review under subsection (3) unless,

- (a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or
- (b) if an application for a review of the decision is made under subsection (3), the Board has confirmed the decision.

**No removal before Board decision**

(13) Subject to subsection (14), if a society or licensee has decided to remove a child from the care of a person with whom the child was placed for adoption, the society or licensee, as the case may be, shall not carry out the proposed removal of the child unless,

- (a) the time for applying for a review of the decision under subsection (3) has expired and an application is not made; or
- (b) if an application for a review of the decision is made under subsection (3), the Board has confirmed the decision.

**Where child at risk**

(14) A society or licensee may carry out a decision to remove a child from the care of a person with whom the child was placed for adoption before the expiry of the time for applying for a review under subsection (3) or at any time after the application for a review is made if, in the opinion of a Director or local director, there is a risk that the child is likely to suffer harm during the time necessary for a review by the Board.

**Notice to Director**

**190** (1) Where a child has been placed for adoption under this Part, no order for the child's adoption has been made and,

- (a) the person with whom the child is placed asks the society or licensee that placed the child to remove the child; or
- (b) the society or licensee proposes to remove the child from the person with whom the child was placed,

the society or licensee shall notify a Director.

**Same**

(2) Where no order for a child's adoption has been made and a year has expired since,

- (a) the earlier of the child's placement for adoption or the giving of the most recent consent under clause 177 (2) (a); or
- (b) the most recent review under subsection (3) of this section,

whichever is later, the society or licensee shall notify a Director, unless the child is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c).

**Director to review**

(3) A Director who receives a notice under subsection (1) or (2) shall conduct a review in accordance with the regulations.

**OPENNESS ORDERS****No access order in effect****Application for openness order**

**191** (1) If a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) is the subject of a plan for adoption, and no access order is in effect under Part V (Child Protection), the society having care and custody of the child may apply to the court for an openness order in respect of the child at any time before an order for adoption of the child is made under section 196.

**Notice of application**

(2) A society making an application under this section shall give notice of the application to,

- (a) the child;
- (b) every person who will be permitted to communicate with or have a relationship with the child if the order is made;
- (c) any person with whom the society has placed or plans to place the child for adoption; and
- (d) any society that will supervise or participate in the arrangement under the openness order.

**Method of giving notice to a child**

(3) Notice to a child under subsection (2) shall be given by leaving a copy with,

- (a) the Children's Lawyer;
- (b) the child's lawyer, if any; and
- (c) the child if they are 12 or older.

**Openness order**

(4) The court may make an openness order under this section in respect of a child if the court is satisfied that,

- (a) the openness order is in the best interests of the child;
- (b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and
- (c) the following entities and persons have consented to the order:
  - (i) the society,
  - (ii) the person who will be permitted to communicate with or have a relationship with the child if the order is made,
  - (iii) the person with whom the society has placed or plans to place the child for adoption, and
  - (iv) the child if they are 12 or older.

**Termination of openness order if extended society care order terminates**

(5) Any openness order made under this section in respect of a child terminates if the child ceases to be in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) by reason of an order made under subsection 113 (1).

**Access order in effect****Notice of intent to place for adoption**

**192** (1) This section applies where,

- (a) a society intends to place a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) for adoption; and



- (b) an order under Part V (Child Protection) is in effect respecting a person's access to the child or the child's access to another person.

### **Notice**

(2) In the circumstances described in subsection (1), the society shall give notice to the following persons:

1. Every person who has been granted a right of access under the access order.
2. Every person with respect to whom access has been granted under the access order.

### **Contents of notice**

(3) The society shall include in the notice the following information:

1. Notice that the society intends to place the child for adoption.
2. Notice that the access order terminates upon placement for adoption.
3. In the case of notice to a person described in paragraph 1 of subsection (2), the fact that the person has a right to apply for an openness order within 30 days after notice is received.
4. In the case of notice to a person described in paragraph 2 of subsection (2), the fact that the person described in paragraph 1 of subsection (2) has the right to apply for an openness order within 30 days after notice is received.

### **Method of giving notice**

(4) Notice may be given by,

- (a) if the person is not a child, leaving a copy,
  - (i) with the person,
  - (ii) if the person appears to be mentally incapable in respect of an issue in the notice, with the person and with the guardian of the person's property or, if none, with the Public Guardian and Trustee, or
  - (iii) with a lawyer who accepts the notice in writing on a copy of the document; or
- (b) if the person is a child, leaving a copy,
  - (i) with the Children's Lawyer,
  - (ii) with the child's lawyer, if any, and
  - (iii) with the child, if they are 12 or older.

### **Alternate method**

(5) On application without notice by a society, the court may order that notice under subsection (2) be given by another method chosen by the court if the society,

- (a) provides detailed evidence showing,
  - (i) what steps have been taken to locate the person to whom the notice is to be given, and
  - (ii) if the person has been located, what steps have been taken to give the notice to the person; and
- (b) shows that the method of giving notice could reasonably be expected to bring the notice to the person's attention.

### **Notice not required**

(6) On application without notice by a society, the court may order that the society is not required to give notice under subsection (2) if,

- (a) reasonable efforts to locate the person to whom the notice is to be given have not been or would not be successful; and
- (b) there is no method of giving notice that could reasonably be expected to bring the notice to the person's attention.

### **Access order in effect**

#### **Application for openness order**

**193** (1) A person described in paragraph 1 of subsection 192 (2) may, within 30 days after notice is received, apply to the court for an openness order.

#### **Notice of application**

(2) A person making an application for an openness order under this section shall give notice of the application to,

- (a) the society having care and custody of the child;
- (b) if someone other than the child is bringing the application, the child; and

- (c) if the child is bringing the application, the person who will be permitted to communicate with or have a relationship with the child if the order is made.

#### **Method of giving notice to child**

- (3) Notice to a child under subsection (2) shall be given by leaving a copy with,
- (a) the Children's Lawyer;
  - (b) the child's lawyer, if any; and
  - (c) the child if they are 12 or older.

#### **Limitation on placement**

- (4) A society shall not place the child for adoption before the time for applying for an openness order under subsection (1) has expired unless every person who is entitled to do so has made an application for an openness order under this section.

#### **Information before placement**

- (5) Where an application for an openness order under this section has been made, a society shall, before placing the child for adoption, advise the person with whom it plans to place the child of the following:

1. The fact that such an application has been made.
2. The relationship of the applicant to the child or, if the child is the applicant, the relationship of the child to the person with whom the child will be permitted to communicate or have a relationship if the order is made.
3. The details of the openness arrangement requested.

#### **Outcome of application**

- (6) Where an application for an openness order under this section has been made, a society shall advise the person with whom the society has placed or plans to place the child for adoption or, after an adoption order is made, the adoptive parent, of the outcome of the application.

#### **Openness order**

- (7) The court may make an openness order under this section in respect of a child if it is satisfied that,
- (a) the openness order is in the best interests of the child;
  - (b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and
  - (c) the child has consented to the order, if they are 12 or older.

#### **Same**

- (8) In deciding whether to make an openness order under this section, the court shall consider the ability of the person with whom the society has placed or plans to place the child for adoption or, after the adoption order is made, the adoptive parent, to comply with the arrangement under the openness order.

#### **Consent of society required**

- (9) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

#### **Termination of openness order if extended society care order terminates**

- (10) Any openness order made under this section in respect of a child terminates if the extended society care order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) to which the child was subject terminates by reason of an order made under subsection 113 (1).

#### **Temporary orders**

- (11) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests.

#### **Openness order — band and First Nations, Inuit or Métis community**

- 194** (1) This section applies where a society intends to place a First Nations, Inuk or Métis child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) for adoption.

#### **Notice**

- (2) In the circumstances described in subsection (1), the society shall give notice to the following persons:
1. A representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
  2. The child.

**Contents of notice**

(3) The society shall include in the notice the following information:

1. Notice that the society intends to place the child for adoption.
2. The fact that the person has a right to apply for an openness order within 30 days after notice is received.
3. The fact that the society has a right to apply for an openness order within 30 days after notice is given.

**Method of giving notice, etc.**

(4) Where notice is required under subsection (2),

- (a) notice shall be given by,
  - (i) if the person is not a child, leaving a copy with the person or with a lawyer who accepts the notice in writing on a copy of the document, or
  - (ii) if the person is a child, leaving a copy,
    - (A) with the Children's Lawyer,
    - (B) with the child's lawyer, if any, and
    - (C) with the child, if they are 12 or older; and
- (b) subsections 192 (5) and (6) apply with necessary modifications.

**Application for openness order**

(5) A person described in paragraph 1 or 2 of subsection (2) may, within 30 days after notice is received, apply to the court for an openness order.

**Same, society**

(6) The society may, within 30 days after notice is given, apply to the court for an openness order.

**Notice of application**

(7) A person or society making an application for an openness order under this section shall give notice of the application to every other person or society who could have made such an application.

**Method of giving notice to a child**

(8) Notice to a child under subsection (7) shall be given by leaving a copy with,

- (a) the Children's Lawyer;
- (b) the child's lawyer, if any; and
- (c) the child if they are 12 or older.

**Openness order**

(9) The court may make an openness order under this section in respect of a child if it is satisfied that,

- (a) the openness order is in the best interests of the child;
- (b) the openness order will help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community;
- (c) the child has consented to the order, if they are 12 or older.

**Application of other provisions**

(10) Subsections 193 (4) to (6) and (8) to (11) apply with necessary modifications for the purposes of this section.

**Application to vary or terminate openness order before adoption**

**195** (1) A society or a person with whom a child has been placed for adoption may apply to the court for an order to vary or terminate an openness order made under section 191, 193 or 194.

**Time for making application**

(2) An application under this section shall not be made after an order for the adoption of the child is made under section 196.

**Notice of application**

(3) A society or person making an application under this section shall give notice of the application to,

- (a) the child;



- (b) every person who is permitted to communicate with or have a relationship with the child under the openness order;
- (c) any person with whom the society has placed or plans to place the child for adoption, if the application under this section is made by the society; and
- (d) any society that supervises or participates in the arrangement under the openness order that is the subject of the application.

#### **Method of giving notice to a child**

- (4) Notice to a child under subsection (3) shall be given by leaving a copy with,
- (a) the Children's Lawyer;
  - (b) the child's lawyer, if any; and
  - (c) the child if they are 12 or older.

#### **Order to vary openness order before adoption**

- (5) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) the proposed order is in the child's best interests; and
  - (c) either,
    - (i) the proposed order would continue a relationship that is beneficial and meaningful to the child, or
    - (ii) in the case of an openness order made under section 194, the proposed order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

#### **Order to terminate openness order before adoption**

- (6) The court shall not terminate an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) termination of the order is in the child's best interests; and
  - (c) in the case of an openness order made under section 191 or 193, the relationship that is the subject of the order is no longer beneficial and meaningful to the child.

#### **Consent of society required**

- (7) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

#### **Alternative dispute resolution**

- (8) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to any matter that is relevant to the proceeding.

#### **Temporary orders**

- (9) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests.

### **ADOPTION ORDERS**

#### **Orders for adoption**

##### **Adoption of child**

**196** (1) The court may make an order for the adoption of a child who is younger than 16, or is 16 or older but has not withdrawn from parental control, and,

- (a) has been placed for adoption by a society or licensee; or
- (b) has been placed for adoption by a person other than a society or licensee and has resided with the applicant for at least two years,

in the child's best interests, on the application of the person with whom the child is placed.

##### **Family adoption**

- (2) The court may make an order for the adoption of a child, in the child's best interests, on the application of,

- (a) a relative of the child;
- (b) the child's parent; or
- (c) the spouse of the child's parent.

**Adoption of adult, etc.**

- (3) The court may make an order for the adoption of,
- (a) a person 18 or older; or
  - (b) a child who is 16 or older and has withdrawn from parental control,
- on another person's application.

**Who may apply**

- (4) An application under this section may only be made,
- (a) by one individual; or
  - (b) jointly, by two individuals who are spouses of one another.

**Residency requirement**

- (5) The court shall not make an order under this section for the adoption of, or on the application of, a person who is not a resident of Ontario.

**Where applicant a minor**

**197** The court shall not make an order under section 196 on the application of a person who is younger than 18 unless the court is satisfied that special circumstances justify making the order.

**Where order not to be made**

**198** Where the court has made an order,

- (a) dispensing with a consent under section 178; or
- (b) refusing to permit the late withdrawal of a consent under subsection 179 (1),

the court shall not make an order under section 196 until the later of,

- (c) the time for commencing an appeal of the order has expired; or
- (d) any appeal of the order has been finally disposed of or abandoned.

**Director's statement**

**199** (1) Where an application is made for an order for the adoption of a child under subsection 196 (1), a Director shall, before the hearing, file a written statement with the court indicating,

- (a) that the child has resided with the applicant for at least six months or, in the case of an application under clause 196 (1) (b), for at least two years and, in the Director's opinion, it would be in the child's best interests to make the order;
- (b) in the case of an application under clause 196 (1) (a), that for specified reasons it would be in the child's best interests, in the Director's opinion, to make the order although the child has resided with the applicant for less than six months; or
- (c) that the child has resided with the applicant for at least six months or, in the case of an application under clause 196 (1) (b), for at least two years and, in the Director's opinion, it would not be in the child's best interests to make the order.

**Additional circumstances**

- (2) The written statement shall refer to any additional circumstances that the Director wishes to bring to the court's attention.

**Local director may make statement**

- (3) Where a child was placed by a society and has resided with the applicant for at least six months, the written statement may be made and filed by the local director.

**Amendment of statement, etc.**

- (4) The Director or local director, as the case may be, may amend the written statement at any time and may attend at the hearing and make submissions.

**Where recommendation negative**

- (5) Where the written statement indicates that, in the Director's or local director's opinion, it would not be in the child's best interests to make the order, a copy of the statement shall be filed with the court and served on the applicant at least 30 days before the hearing.

### **Report of child's adjustment**

- (6) The written statement shall be based on a report of the child's adjustment in the applicant's home, prepared by,
- (a) the society that placed the child or has jurisdiction where the child is placed; or
  - (b) a person approved by the Director or local director.

### **Family adoptions**

- (7) Where an application is made for an order for the adoption of a child under subsection 196 (2),
- (a) subsections (1), (2), (4), (5) and (6) apply to the application, if the child was not a resident of Canada before being placed for adoption; and
  - (b) the court may order that subsections (1), (2), (4), (5) and (6) apply to the application, if the child was a resident of Canada before being placed for adoption.

### **Place of hearing**

**200** (1) An application for an adoption order shall be heard and dealt with in the county or district in which,

- (a) the applicant; or
- (b) the person to be adopted,

resides at the time the application is filed.

### **Transfer of proceeding**

(2) Where the court is satisfied at any stage of an application for an adoption order that there is a preponderance of convenience in favour of conducting it in another county or district, the court may order that it be transferred to that other county or district and be continued as if it had been commenced there.

### **Rules re applications**

#### **Hearing in private**

**201** (1) An application for an adoption order shall be heard and dealt with in the absence of the public.

#### **Court files private**

- (2) No person shall have access to the court file concerning an application for an adoption order, except,
- (a) the court and authorized court employees;
  - (b) the parties and the persons representing them under the authority of the *Law Society Act*; and
  - (c) a Director and a local director.

### **Stale applications**

- (3) Where an application for an adoption order is not heard within 12 months of the day on which the applicant signed it,
- (a) the court shall not hear the application unless the court is satisfied that it is just to do so; and
  - (b) the applicant may make another application.

### **No right to notice**

- (4) A person is not entitled to receive notice of an application under section 196 if,
- (a) the person has given a consent under clause 177 (2) (a) and has not withdrawn it;
  - (b) the person's consent has been dispensed with under section 178; or
  - (c) the person is a parent of a child who is in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) who is placed for adoption.

### **Power of court**

**202** (1) The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been made in a proceeding under the *Family Law Act*.

### **Duty of court**

- (2) The court shall not make an order for the adoption of a child under subsection 196 (1) or (2) unless the court is satisfied that,
- (a) every person who has given a consent under section 177 understands the nature and effect of the adoption order; and
  - (b) every applicant understands and appreciates the special role of an adoptive parent.



**Participation of child**

- (3) Where an application is made for an order for the adoption of a child under subsection 196 (1) or (2), the court,
- (a) shall inquire into the child's capacity to understand and appreciate the nature of the application;
  - (b) shall take the child's views and wishes into account and give them due weight in accordance with the child's age and maturity; and
  - (c) where it is practical to do so, shall hear the child.

**Participation of adult, etc.**

- (4) Where an application is made for an order for the adoption of a person under subsection 196 (3), the court shall consider the person's views and wishes and, on request, hear the person.

**Change of name**

**203** (1) Where the court makes an order under section 196, the court may, at the request of the applicant or applicants and, where the person adopted is 12 or older, with the person's written consent,

- (a) change the person's surname to a surname that the person could have been given if the person had been born to the applicant or applicants; and
- (b) change the person's given name.

**When child's consent not required**

- (2) A child's consent to a change of name under subsection (1) is not required where the child's consent was dispensed with under subsection 177 (9).

**Varying or terminating openness orders after adoption**

**204** (1) Any of the following persons may apply to the court to vary or terminate an openness order made under section 191, 193 or 194 after an order for adoption has been made under section 196:

- 1. An adoptive parent.
- 2. The adopted child.
- 3. A person who is permitted to communicate or have a relationship with the child under the openness order.
- 4. Any society that supervises or participates in the arrangement under the openness order that is the subject of the application.

**Leave**

- (2) Despite paragraphs 2 and 3 of subsection (1), the child and a person who is permitted to communicate or have a relationship with the child under an openness order shall not make an application under subsection (1) without leave of the court.

**Jurisdiction**

- (3) An application under subsection (1) shall be made in the county or district,
- (a) in which the child resides, if the child resides in Ontario; or
  - (b) in which the adoption order for the child was made if the child does not reside in Ontario, unless the court is satisfied that the preponderance of convenience favours having the matter dealt with by the court in another county or district.

**Notice**

- (4) A person making an application under subsection (1) shall give notice of the application to every other person who could have made an application under that subsection with respect to the order.

**Method of giving notice to a child**

- (5) Notice to a child under subsection (4) shall be given by leaving a copy with,
- (a) the Children's Lawyer;
  - (b) the child's lawyer, if any; and
  - (c) the child if they are 12 or older.

**Order to vary openness order**

- (6) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) the proposed order is in the child's best interests; and

(c) either,

- (i) the proposed order would continue a relationship that is beneficial and meaningful to the child, or
- (ii) in the case of an openness order made under section 194, the proposed order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

#### **Order to terminate openness order**

(7) The court shall not terminate an openness order under this section unless the court is satisfied that,

- (a) a material change in circumstances has occurred;
- (b) termination of the order is in the child's best interests; and
- (c) in the case of an openness order made under section 191 or 193, the relationship that is the subject of the order is no longer beneficial and meaningful to the child.

#### **Consent of society required**

(8) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

#### **Alternative dispute resolution**

(9) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to a matter relevant to the proceeding.

#### **Appeal of order to vary or terminate openness order**

**205** (1) An appeal from a court's order under section 195 or 204 may be made to the Superior Court of Justice by,

- (a) any person who was entitled to apply for the order to vary or terminate the openness order; or
- (b) any person who was entitled to notice of the application to vary or terminate the openness order.

#### **Temporary order**

(2) Pending final disposition of the appeal, the Superior Court of Justice may on any party's motion make a temporary order in the child's best interests that varies or suspends an openness order.

#### **No time extension**

(3) No extension of the time for an appeal shall be granted.

#### **Further evidence**

(4) The court may receive further evidence relating to events after the appealed decision.

#### **Place of hearing**

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

#### **Application of s. 201**

**206** Subsections 201 (1) and (2) apply with necessary modifications to proceedings under sections 191, 193, 194, 195, 204 and 205.

#### **Child may participate**

**207** A child is entitled to participate in the proceeding under section 191, 193, 194, 195, 204 or 205 as if they were a party.

#### **Legal representation of child**

**208** (1) A child may have legal representation at any stage in a proceeding under section 191, 193, 194, 195, 204 or 205 and subsection 77 (2) applies with necessary modifications to such a proceeding.

#### **Children's Lawyer**

(2) The Children's Lawyer may provide legal representation to a child under this Part if, in the opinion of the Children's Lawyer, such representation is appropriate.

#### **Court may refer matter to Children's Lawyer**

(3) Where the court determines that legal representation is desirable, the court may refer the matter to the Children's Lawyer.

## OPENNESS AGREEMENTS

### Who may enter into openness agreement

**209** (1) For the purposes of facilitating communication or maintaining relationships, an openness agreement may be made by an adoptive parent of a child or by a person with whom a society or licensee has placed or plans to place a child for adoption and any of the following persons:

1. A birth parent, birth relative or birth sibling of the child.
2. A foster parent of the child or another person who cared for the child or in whose custody the child was placed at any time.
3. A member of the child's extended family or community with whom the child has a significant relationship or emotional tie.
4. An adoptive parent of a birth sibling of the child or a person with whom a society or licensee has placed or plans to place a birth sibling of the child for adoption.
5. In the case of a First Nations, Inuk or Métis child,
  - i. a person described in paragraph 1, 2, 3 or 4, or
  - ii. a member of the child's bands and First Nations, Inuit or Métis communities who may not have had a significant relationship or emotional tie with the child in the past but will help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

### When agreement may be made

(2) An openness agreement may be made at any time before or after an adoption order is made.

### Agreement may include dispute resolution process

(3) An openness agreement may include a process to resolve disputes arising under the agreement or with respect to matters associated with it.

### Child's views and wishes of child

(4) Before an openness agreement is made, the child's views and wishes shall be taken into account and given due weight in accordance with the child's age and maturity.

## INTERIM ORDERS

### Interim order

**210** (1) Where an application is made for an order for the adoption of a child under subsection 196 (1) or (2), the court, after considering the statement made under subsection 199 (1), may postpone the determination of the matter and make an interim order in the child's best interests placing the child in the applicant's care and custody for a specified period not exceeding one year.

### Terms and conditions

(2) The court may make an order under subsection (1) subject to any terms and conditions that the court considers appropriate respecting,

- (a) the child's maintenance and education;
- (b) supervision of the child; and
- (c) any other matter the court considers advisable in the child's best interests.

### Not an adoption order

(3) An order under subsection (1) is not an adoption order.

### Consents required

(4) Sections 177 and 178 (consents to adoption) apply to an order under subsection (1) with necessary modifications.

### Departure from Ontario

(5) Where an applicant takes up residence outside Ontario after obtaining an order under subsection (1), the court may nevertheless make an adoption order under subsection 196 (1) or (2) where the statement made under subsection 199 (1) indicates that, in the Director's or local director's opinion, it would be in the child's best interests to make the order.



### **Successive adoption orders**

**211** An adoption order under subsection 196 (1) or (2) or an interim custody order under subsection 210 (1) may be made in respect of a person who is the subject of an earlier adoption order.

## **APPEALS**

### **Appeals**

#### **Appeal: adoption order**

**212** (1) An appeal from a court's order under section 196 may be made to the Superior Court of Justice by,

- (a) the applicant for the adoption order; and
- (b) the Director or local director who made the statement under subsection 199 (1).

#### **Same: dispensing with consent**

(2) An appeal from a court's order under section 178 dispensing with a consent may be made to the Superior Court of Justice by,

- (a) the persons referred to in subsection (1) of this section; and
- (b) the person whose consent was dispensed with.

#### **Same: late withdrawal of consent**

(3) An appeal from a court's order under subsection 179 (1) permitting the late withdrawal of a consent may be made to the Superior Court of Justice by,

- (a) the persons referred to in subsection (1) of this section; and
- (b) the person who gave the consent.

#### **No extension of time for appeal**

(4) No extension of the time for an appeal shall be granted.

#### **Place of hearing**

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

#### **Hearing in private**

(6) An appeal under this section shall be heard in the absence of the public.

## **EFFECT OF ADOPTION ORDER**

### **Order final**

**213** (1) An adoption order under section 196 is final and irrevocable, subject only to section 212 (appeals), and shall not be questioned or reviewed in any court by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review.

#### **Validity of adoption order not affected by openness order or agreement**

(2) Compliance or non-compliance with the terms of an openness order or openness agreement relating to a child does not affect the validity of an order made under section 196 for the adoption of the child.

#### **Status of adopted child**

**214** (1) In this section,

“adopted child” means a person who was adopted in Ontario.

#### **Same**

(2) For all purposes of law, as of the date of the making of an adoption order,

- (a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adopted child; and
- (b) the adopted child ceases to be the child of the person who was the adopted child's parent before the adoption order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adoptive parent.

### **How relationships determined**

(3) The relationship to one another of all persons, including the adopted child, the adoptive parent, the kindred of the adoptive parent, the parent before the adoption order was made and the kindred of that former parent shall for all purposes be determined in accordance with subsection (2).

### **Reference in will or other document**

(4) In any will or other document made at any time before or after the day this subsection comes into force and whether the maker of the will or document is alive on that day or not, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person is deemed to refer to or include, as the case may be, a person who comes within the description as a result of an adoption, unless the contrary is expressed.

### **Application of section**

(5) This section applies and is deemed always to have applied with respect to any adoption made under any Act that is in force, but not so as to affect,

- (a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and
- (b) any interest in property or right that has indefeasibly vested before the day this subsection comes into force.

### **Exception**

(6) Subsections (2) and (3) do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove a person from a relationship that would have existed but for those subsections.

### **Effect of foreign adoption**

**215** An adoption effected according to the law of another jurisdiction, before or after the day this section comes into force, has the same effect in Ontario as an adoption under this Part.

### **No order for access by birth parent, etc.**

**216** Where an order for the adoption of a child has been made under this Part, no court shall make an order under this Part for access to the child by,

- (a) a birth parent; or
- (b) a member of a birth parent's family.

## **MAINTENANCE OF RELATIONSHIPS**

### **Maintenance of relationships**

**217** (1) A society shall make all reasonable efforts to assist a child to maintain relationships with persons that are beneficial and meaningful to the child in the following circumstances:

1. The child was placed for adoption by the society and the society has decided not to finalize the adoption of the child by the person with whom the child was placed.
2. A child returns to the care of a society after an adoption order was made.

### **Openness order or agreement or access order**

(2) For the purposes of subsection (1), in addition to what is permitted under subsection 102 (8), a society shall,

- (a) facilitate contact or communication provided for under an existing openness order or openness agreement in respect of the child and the persons who are subject to or parties to the openness order or openness agreement, as the case may be; and
- (b) consider whether to apply for an order for access under Part V (Child Protection) in respect of the child and the persons.

### **Existing openness order continues in force**

(3) For greater certainty, in a circumstance described in paragraph 1 or 2 of subsection (1), an existing openness order continues to be in force until it is varied or terminated.

## **RECORDS, CONFIDENTIALITY AND DISCLOSURE**

### **Parent to be informed on request**

**218** At the request of a person whose consent to an adoption was required under clause 177 (2) (a) or clause 137 (2) (a) of the old Act and was given or was dispensed with, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption.

## **Court papers**

**219 (1)** In this section,

“court” includes the Superior Court of Justice.

## **Requirement to seal documents**

(2) Subject to subsections (3) and 221 (2), the documents used on an application for an adoption order under this Part or Part VII (Adoption) of the old Act shall be sealed up together with a certified copy of the original order and filed in the court office by the appropriate court officer, and shall not be opened for inspection except by court order.

## **Transmission of order**

(3) Within 30 days after an adoption order is made under this Part, the proper officer of the court shall cause a sufficient number of certified copies of it to be made, under the seal of the proper certifying authority, and shall provide,

- (a) the original order to the adoptive parent;
- (b) one certified copy to the Registrar General under the *Vital Statistics Act*, or, if the adopted child was born outside Ontario, two certified copies;
- (c) if the adopted child is registered or entitled to be registered under the *Indian Act* (Canada), one certified copy to the Registrar under that Act; and
- (d) one certified copy to such other persons as may be prescribed.

## **Other court files**

(4) Unless the court orders otherwise, only the court may examine identifying information that comes from the records of any of the following persons that is contained in any court file respecting the judicial review of a decision made by any of them:

1. A designated custodian under section 220.
2. A person who, by virtue of a regulation made under paragraph 18 of subsection 323 (1), reviews or hears appeals of decisions concerning the disclosure of information under section 221 or 222.
3. A person referred to in subsection 221 (1) or 222 (1).

## **Same**

(5) No person shall, without the court’s permission, disclose identifying information described in subsection (4) that the person obtained from the court file.

## **Definition**

(6) In subsections (4) and (5),

“identifying information” means information whose disclosure, alone or in combination with other information, will in the circumstances reveal the identity of the person to whom it relates.

## **Designation of custodians of information**

**220 (1)** The Lieutenant Governor in Council may, by regulation, designate one or more persons to act as custodians of information that relates to adoptions and may impose such conditions and restrictions with respect to the designation as the Lieutenant Governor in Council considers appropriate.

## **Powers and duties**

(2) A designated custodian may exercise such powers and shall perform such duties as may be prescribed with respect to the information provided to the custodian under this Act.

## **Same, disclosure of information**

(3) A designated custodian may exercise such other powers and shall perform such other duties as may be prescribed for a purpose relating to the disclosure of information that relates to adoptions, including performing searches upon request for such persons, and in such circumstances, as may be prescribed.

## **Agreements**

(4) The Minister may enter into agreements with designated custodians concerning their powers and duties under this section and the agreements may provide for payments to be made to the designated custodians.

## **Disclosure to designated custodian**

**221 (1)** The Minister, the Registrar General under the *Vital Statistics Act*, a society, a licensee and such other persons as may be prescribed shall give a designated custodian under section 220 such information that relates to adoptions as may be prescribed in such circumstances as may be prescribed.



**Same, adoption orders**

(2) A court shall give a designated custodian a certified copy of an adoption order made under this Part together with such other documents as may be prescribed in such circumstances as may be prescribed.

**Disclosure to others****By the Minister**

**222** (1) The Minister shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

**By a society**

(2) A society shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

**By a licensee**

(3) A licensee shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

**By a custodian**

(4) A designated custodian under section 220 shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.

**Scope of application**

**223** Sections 221 and 222 apply with respect to information that relates to an adoption regardless of when the adoption order was made.

**CONFIDENTIALITY OF ADOPTION RECORDS****Confidentiality of adoption information**

**224** (1) Despite any other Act, after an adoption order is made, no person shall inspect, remove, alter or disclose information that relates to the adoption and is kept by the Ministry, a society, a licensee or a designated custodian under section 220 and no person shall permit it to be inspected, removed, altered or disclosed unless the inspection, removal, alteration or disclosure is,

- (a) necessary for the maintenance or updating of the information by the Ministry, society, licensee or designated custodian or their staff; or
- (b) authorized by this Act or the regulations.

**Powers of courts and tribunals**

(2) Subsection (1) does not affect the power of a court or tribunal to compel a witness to testify or to compel the production of a document.

**Application**

(3) This section applies regardless of when the adoption order was made.

**Privacy**

(4) The *Freedom of Information and Protection of Privacy Act* does not apply to information that relates to an adoption.

**INJUNCTION****Injunction**

**225** (1) The Superior Court of Justice may grant an injunction to restrain a person from contravening subsection 188 (2), on the society's or licensee's application.

**Variation, etc.**

(2) The Court may vary or terminate an order made under subsection (1), on any person's application.

**LICENSING — REQUIREMENT FOR LICENCE; ISSUANCE AND RENEWAL****Licences****Licence required**

**226** (1) No person other than a society shall place a child for adoption, except under the authority of a licence issued by a Director.

### Issuing licence

(2) Subject to section 228, a person who applies for a licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to be issued a licence by a Director, subject to any conditions imposed by the Director.

#### To individual or non-profit agency only

(3) Despite subsection (2), a licence shall only be issued to an individual or a non-profit agency.

### Renewal of licence

(4) Subject to section 229, a licensee who applies for renewal of the licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to have the licence renewed by a Director, subject to any conditions imposed by the Director.

### Provisional licence or renewal

(5) Where an applicant for a licence or renewal of a licence does not meet all the requirements for the issuing or renewal of the licence and requires time to meet them, a Director may, subject to such conditions as the Director may impose, issue a provisional licence for the period that the Director considers necessary to give the applicant time to meet the requirements.

### Not transferable

(6) A licence is not transferable.

### Definition

(7) In this section,

“non-profit agency” means a corporation without share capital that has objects of a charitable nature and,

(a) to which Part III of the *Corporations Act* applies, or

(b) that is incorporated by or under a general or special Act of the Parliament of Canada.

### Conditions

~~227 At any time during the term of a licence, a Director may impose conditions on the licence or amend the conditions on the licence.~~

#### Conditions of licence

~~227 (1) On issuing or renewing a licence or at any other time, a Director may impose on the licence the conditions that the Director considers appropriate.~~

#### Amending conditions

~~(2) A Director may, at any time, amend the conditions imposed on the licence.~~

### Notice

~~(3) The Director shall notify the licensee in writing of the imposition or amendment of the conditions.~~

### Contents of notice

~~(4) The notice shall set out the reasons for imposing or amending the conditions and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 231 (1).~~

### Conditions take effect upon notice

~~(5) The imposition or amendment of conditions takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.~~

### Licensee must comply

~~(6) Every licensee shall comply with the conditions to which the licence is subject.~~

## LICENSING — REFUSAL AND REVOCATION

### Grounds for refusal

228 A Director may propose to refuse to issue a licence where, in the Director's opinion,

(a) the applicant or an employee of the applicant, or, where the applicant is a corporation, an officer or director of the corporation is not competent to place children for adoption in a responsible manner in accordance with this Act and the regulations;

(b) the past conduct of any person mentioned in clause (a) affords reasonable grounds for belief that the placement of children for adoption will not be carried on in a responsible manner in accordance with this Act and the regulations; or

(c) a ground exists that is prescribed as a ground for refusing to issue a licence.

### **Grounds for revocation, refusal to renew**

**229** A Director may propose to revoke or refuse to renew a licence where, in the Director's opinion,

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under their control or direction or associated with them to contravene,
  - (i) this Act or the regulations,
  - (ii) any other applicable law, or
  - (iii) a condition of the licence;
- (b) the placement of children for adoption is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (c) a person has made a false statement in the application for the licence or for its renewal, or in a report or document required to be furnished by this Act or the regulations or any other applicable law;
- (d) a change has occurred in the employees, officers or directors of the licensee that would, if the licensee were applying for the licence in the first instance, afford grounds under clause 228 (b) for refusing to issue the licence; or
- (e) a ground exists that is prescribed as a ground for revoking or refusing to renew a licence.

### **LICENSING — HEARING BY TRIBUNAL**

#### **Hearings arising out of s. 228 or 229**

##### **Notice of proposal**

**230** (1) Where a Director proposes to refuse to issue a licence under section 228 or to revoke or refuse to renew a licence under section 229, the Director shall notify the applicant or licensee of the proposal in writing.

##### **Request for hearing**

(2) A notice under subsection (1) shall set out the reasons for the proposal and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if they deliver a written request for a hearing to the Director and to the Tribunal within 10 days after the notice is given.

##### **Powers of Director where no hearing requested**

(3) Where an applicant or licensee does not request a hearing under subsection (2), the Director may carry out the proposal.

##### **Powers of Tribunal where hearing requested**

(4) Where an applicant or licensee requests a hearing under subsection (2), the Tribunal shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) order the Director to carry out the proposal; or
- (b) order the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations.

##### **Discretion of Tribunal**

(5) In making an order under subsection (4), the Tribunal may substitute its opinion for that of the Director.

##### **Review of conditions by Tribunal**

**231** (1) A licensee who is dissatisfied with the conditions imposed by a Director under subsection 226 (2), (4) or (5) or section 227 is entitled to a hearing by the Tribunal if the licensee delivers a written request for a hearing to the Director and to the Tribunal within 15 days after receiving the licence.

##### **Powers of Tribunal**

(2) Where a licensee requests a hearing under subsection (1), the Tribunal shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) confirm any or all of the conditions;
- (b) strike out any or all of the conditions; or
- (c) impose such other conditions as the Tribunal considers appropriate.

##### **Continuation of licence pending renewal**

**232** Subject to section 233, where a licensee has applied for renewal of a licence and paid the prescribed fee within the prescribed time or, if no time is prescribed, before the licence expires, the licence is deemed to continue,



- (a) until the renewal is granted; or
- (b) where the licensee is served with notice that the Director proposes to revoke the licence or to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its decision.

### **Suspension of licence**

**233** (1) A Director may, by giving written notice to a licensee, suspend the licence where, in the Director's opinion, the manner in which children are placed for adoption by the licensee is an immediate threat to the health, safety or welfare of the children.

### **Suspension takes effect upon notice**

(2) A suspension takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

### **s. 230 (2)-(4) apply**

(3) Where a notice is given under subsection (1), subsections 230 (2), (3) and (4) apply with necessary modifications.

### **Application of other provisions**

**234** Sections 263 and 264 apply with necessary modifications to proceedings before the Tribunal under this Part and to appeals of its orders.

## **LICENSING — DELIVERY OF LICENCE AND RECORDS**

### **Licence and record to be delivered**

**235** If a licence is revoked or renewal of it refused, or if a licensee ceases to place children for adoption, the licensee shall,

- (a) promptly deliver the licence to the Minister; and
- (b) deliver all the records in the licensee's possession or control that relate to the children to whom services were being provided to a prescribed person or entity within the prescribed time.

## **LICENSING — INJUNCTIONS**

### **Injunction**

**236** (1) A Director may apply to the Superior Court of Justice for an order enjoining a licensee from placing children for adoption while the licence is suspended under section 233.

### **Variance or discharge**

(2) A licensee may apply to the court for an order varying or discharging an order made under subsection (1).

## **OFFENCES**

### **No payments for adoption**

**237** No person, whether before or after a child's birth, shall give, receive or agree to give or receive a payment or reward of any kind in connection with,

- (a) the child's adoption or placement for adoption;
- (b) a consent under section 177 to the child's adoption; or
- (c) negotiations or arrangements with a view to the child's adoption,

except for,

- (d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director;
- (e) proper legal fees and disbursements; and
- (f) a subsidy paid by a society or by the Minister to an adoptive parent or to a person with whom a child is placed for adoption.

### **Offences**

**238** (1) A person who contravenes subsection 180 (1), (2), (3) or (4) (placement for adoption) and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence, whether an order is subsequently made for the child's adoption or not, and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

### **Same**

(2) A person who contravenes subsection 180 (5) (receiving child) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both.

**Same**

(3) A person who contravenes subsection 188 (2) (interference with child) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both.

**Same**

(4) A person who contravenes section 237 and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than three years, or to both.

**Limitation**

(5) A proceeding under subsection (1), (2) or (4) shall not be commenced more than two years after the day on which the offence was, or is alleged to have been, committed.

**Offences — licensing**

**239** (1) A person is guilty of an offence if the person,

- (a) knowingly provides false information in an application for a licence or renewal of a licence under this Part or in a statement, report or return required to be provided in respect of a licensing matter under this Part or the regulations; or
- (b) fails to comply with an order or direction made by a court in relation to a licensing matter under this Part.

**Directors, officers and employees**

(2) It is an offence for a director, officer or employee of a corporation to authorize, permit or concur in the commission by the corporation of an offence described in subsection (1).

**Penalty**

(3) Every person convicted of an offence under this section is liable to a fine of not more than \$5,000.

## PART IX RESIDENTIAL LICENSING

**Definitions**

**240** In this Part,

“children’s residence” means any of the following residences where children live and receive residential care:

- 1. A parent model residence having five or more children not of common parentage.
- 2. A staff model residence having three or more children not of common parentage, including an institution that is supervised or operated by a society or a place of temporary detention, of secure custody or of open custody.
- 3. Any other prescribed residence.

A children’s residence does not include the following:

- 4. A house licensed under the *Private Hospitals Act*.
- 5. A child care centre as defined in the *Child Care and Early Years Act, 2014*.
- 6. A recreational camp under the *Health Protection and Promotion Act*.
- 7. A home for special care under the *Homes for Special Care Act*.
- 8. A school or private school as defined in the *Education Act*.
- 9. A hostel intended for short term accommodation.
- 10. A hospital that receives financial aid from the Government of Ontario.
- 11. A group home or similar facility that receives financial assistance from the Minister of Community Safety and Correctional Services but receives no financial assistance from the Minister under this Act.
- 12. Any other prescribed place; (“foyer pour enfants”)

“directive” means a directive issued by the Minister under section 249; (“directive”)

“parent model residence” means a building, group of buildings or part of a building where not more than two adult persons live and provide care for children on a continuous basis; (“foyer de type familial”)

“placing agency” means ~~a society or other corporation~~ a person or entity, including a society, that places a child in residential care or in foster care and includes a licensee; (“agence de placement”)

“staff model residence” means a building, group of buildings or part of a building where adult persons are employed to provide care for children on the basis of scheduled periods of duty. (“foyer avec rotation de personnel”)

## PROTECTIVE MEASURES

### **Licence required**

**241** No person shall do any of the following except under the authority of a licence:

1. Operate a children's residence.
2. Provide residential care, directly or indirectly, in places that are not children's residences,
  - i. for three or more children not of common parentage, or
  - ii. in such circumstances as may be prescribed.

### **Prohibition — past offence**

**242** No person shall operate a children's residence or provide residential care under the authority of a licence if they have been convicted of a prescribed offence.

### **Prohibition — holding out as licensed**

**243** No person shall represent or hold out expressly or by implication that they are licensed to operate a children's residence or to provide residential care unless the person is licensed to do so.

### **Placements must comply with Act and regulations, etc.**

**244** No licensee shall place a child in a children's residence or other place where residential care is provided except in accordance with this Act, the regulations and the directives.

### **Duty to keep licence**

**245 (1)** A licensee shall keep a copy of the licence at the following premises and shall ensure that the licence is available for public inspection:

1. In the case of a children's residence, at the residence.
2. In the case of any other place where residential care is provided under the authority of a licence, at the business premises of the licensee or other prescribed premises.

### **Duty to post information**

(2) A licensee shall post any prescribed information in a conspicuous place at the children's residence or other place where residential care is provided under the authority of a licence.

### **Duty to provide licence and other information**

**246 (1)** Before a child is placed in a children's residence or other place where residential care is provided under the authority of a licence, the licensee shall give the following to the placing agency, where the placing agency is not the licensee, or to the person placing the child:

1. A copy of the licence to operate the children's residence or to provide residential care, as the case may be.
2. Any other prescribed information.

### **Record of compliance**

(2) The licensee shall make and keep a record of its compliance with subsection (1),

- (a) in the case of a children's residence, at the residence; or
- (b) in the case of any other place where residential care is provided under the authority of a licence, at the business premises of the licensee or other prescribed premises.

### **Report certain matters to a Director**

**247 (1)** If, in the course of employment, it comes to the attention of a prescribed person that there are reasonable grounds to suspect that there is an immediate threat to the health, safety or welfare of any child placed in a children's residence or other place where residential care is provided under the authority of a licence, the person shall immediately report the suspicion and the information on which it is based to a Director.

### **Inspection**

(2) If a suspicion is reported to a Director under subsection (1), the Director shall have an inspector conduct an inspection or make inquiries for the purpose of determining compliance with this Act, the regulations and the directives.

### **Solicitor-client privilege**

(3) Nothing in this section abrogates any privilege that may exist between a lawyer and the lawyer's client.



**Duty to report**

(4) Nothing in this section affects the duty to report a suspicion under section 122.

**Director may exempt**

**248** A Director may, in the prescribed circumstances, exempt the following from any provision of this Part, the regulations under this Part or a directive for the time period and on the conditions specified by the Director:

1. A place or class of places where residential care is provided under the authority of a licence.
2. A person or class of persons who provide, or are applying to provide, residential care under the authority of a licence.

**Directives by Minister**

**249** (1) The Minister may issue directives to licensees with respect to any prescribed matter.

**Binding**

(2) A licensee shall comply with every directive issued to it under this section.

**General or particular**

(3) A directive may be general or particular in its application.

**Law prevails**

(4) For greater certainty, in the event of a conflict between a directive issued under this section and a provision of any applicable Act or rule of any applicable law, the provision or rule prevails.

**Public availability**

(5) The Minister shall make every directive under this section available to the public.

**Non-application of *Legislation Act, 2006***

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a directive issued under this section.

**Publication of information by Minister**

**250** (1) The Minister may publish the following information with respect to licences and applications for licences:

1. The name of the licensee and prescribed contact information.
2. The name of the children's residence or other place where residential care is provided.
3. The conditions, if any, imposed on the licence under section 252.
4. The term of the licence specified under section 253.
5. The class, if any, assigned to the licence under section 255.
6. The maximum number of children for whom residential care may be provided by the licensee, set out in the licence under section 256.
7. Information about the programs and services to be provided under the authority of the licence.
8. A summary of each proposal to refuse to issue a licence under section 258, or under section 195 of the old Act, or to revoke or refuse to renew a licence under section 259, or under section 196 of the old Act, unless the refusal or revocation was not carried out.
9. A summary of each notice of a suspension under section 261, or under section 200 of the old Act.
10. The amount that the licensee shall charge for the provision of residential care under section 265.
11. A summary of each inspection report prepared under section 275.
12. Any other prescribed licensing information.

**Not in force**

(2) The authority under subsection (1) includes the authority to publish information with respect to licences that are no longer in force.

**Manner**

(3) The Minister may publish the information in any manner or format the Minister considers appropriate.

## LICENCES

### Issuance and renewal of licence

#### Application

**251** (1) An application for a licence or the renewal of a licence to operate a children's residence or to provide residential care shall be made by submitting to a Director,

- (a) an application in a form approved by the Minister;
- (b) an attestation, to be completed by the applicant in a form approved by the Minister, confirming that the applicant is not prohibited from operating a children's residence or from providing residential care under the authority of a licence under section 242;
- (c) any other information or documentation that may be specified by the Minister; and
- (d) payment of the prescribed fee.

#### Additional requirements

(2) An applicant for a licence or the renewal of a licence shall comply with any other prescribed requirements and the directives that relate to the application process, unless the applicant withdraws the application.

#### Director's duty to issue or renew

(3) A Director shall issue or renew a licence if the applicant applied in accordance with subsections (1) and (2) unless,

- (a) the Director proposes to refuse to do so in accordance with section 258 or 259; or
- (b) the applicant is under 18 years old, is a partnership or is an association of persons.

#### Not transferable

(4) A licence is not transferable.

#### Conditions of licence

**252** (1) On issuing or renewing a licence or at any other time, a Director may impose on the licence the conditions that the Director considers appropriate.

#### Amending conditions

(2) A Director may, at any time, amend the conditions imposed on the licence.

#### Notice

(3) The Director shall notify the licensee in writing of the imposition or amendment of the conditions.

#### Contents of notice

(4) The notice shall set out the reasons for imposing or amending the conditions and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 262 (2).

#### Conditions take effect upon notice

(5) The imposition or amendment of conditions takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

#### Licensee must comply

(6) Every licensee shall comply with the conditions to which the licence is subject.

#### Term of licence

**253** (1) A licence shall be issued or renewed,

- (a) for a term specified by the Director in accordance with the regulations; or
- (b) if there are no regulations governing the term, for a term specified by the Director that does not exceed one year.

#### Expiry at end of term

(2) A licence expires at the end of its term, unless it is deemed to continue under section 254.

#### Revocation for cause

(3) Nothing in this section prevents a licence from being revoked or suspended.

#### Continuation of licence pending renewal

**254** Subject to a suspension under section 261, if a licensee has applied for renewal of a licence and paid the prescribed fee before the licence expires, the licence is deemed to continue,

- (a) until the renewal is granted; or
- (b) if the licensee is given notice that the Director proposes to revoke or refuse to renew the licence under section 259, until the time for requiring a hearing by the Tribunal has expired and, if a hearing is required, until the Tribunal has made its decision.

#### **Class of licence**

**255** A Director may assign a class to a licence in accordance with the regulations,

- (a) when issuing or renewing a licence; or
- (b) at any other time, if authorized by the regulations.

#### **Maximum number of children**

**256** (1) On issuing or renewing a licence, a Director may set out in the licence the maximum number of children for whom residential care may be provided by the licensee in the children's residence or other place where residential care is provided.

#### **Changing maximum number**

~~(2) A Director may, at any time, change the maximum number of children set out in the licence.~~

#### **Changing maximum number**

(2) A Director may at any time, but with notice to the licensee that is reasonable in the circumstances, change the maximum number of children set out in the licence.

#### **Licensee must comply**

(3) A licensee shall not admit to the children's residence or other place where residential care is provided more children than the maximum number set out in the licence, unless the admission is approved by a Director for a specified period of time.

#### **Appeals of class or maximum number**

**257** If authorized by the regulations, a licensee may, in accordance with the regulations,

- (a) require a review by the Tribunal of,
  - (i) the class assigned to a licence under section 255, or
  - (ii) the maximum number of children set out in a licence under section 256; and
- (b) appeal the Tribunal's decision to the Divisional Court.

#### **Refusals and revocations**

##### **Proposal to refuse to issue**

**258** A Director may propose to refuse to issue a licence if, in the Director's opinion,

- (a) the applicant or an employee of the applicant, or where the applicant is a corporation, an officer or director of the corporation is not competent to operate a children's residence or to provide residential care, as the case may be, in a responsible manner in accordance with this Act, the regulations or any other applicable law;
- (b) the past conduct of any person mentioned in clause (a) affords reasonable grounds to believe that the operation of the children's residence or the provision of residential care will not be carried on in a responsible manner in accordance with this Act, the regulations or any other applicable law;
- (c) the premises in which the applicant proposes to operate the children's residence or to provide residential care do not comply with the requirements of this Part, the regulations or any other applicable law;
- (d) any person has made a false statement in the application for the licence, or in any report, document or other information required to be furnished by this Act or the regulations or any other applicable law;
- (e) a licence held by the applicant has been revoked or the renewal of such a licence has been refused and there has been no material change in the applicant's circumstances; or
- (f) a ground exists that is prescribed as a ground for refusing to issue a licence.

##### **Proposal to revoke or refuse to renew**

**259** A Director may propose to revoke or refuse to renew a licence if, in the Director's opinion,

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under their control or direction or associated with them to contravene,
  - (i) this Act or the regulations,



- (ii) any other applicable law, or
- (iii) a condition of the licence;
- (b) the conduct of any person mentioned in clause (a) affords reasonable grounds to believe,
  - (i) that the person is not competent to operate a children's residence or to provide residential care in a responsible manner in accordance with this Act, the regulations or any other applicable law, or
  - (ii) that the children's residence or other place where residential care is provided is not being or will not be operated in accordance with this Act, the regulations or any other applicable law;
- (c) the premises where the children's residence is located or the residential care is provided do not comply with the requirements of this Part, the regulations or any other applicable law;
- (d) the operation of the children's residence or the provision of residential care is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (e) any person has made a false statement in the application for the licence or for its renewal, or in a report or document required to be furnished by this Act or the regulations or any other applicable law;
- (f) a change has occurred in the employees, officers or directors of the licensee that would, if the licensee were applying for the licence in the first instance, afford grounds under clause 258 (b) for refusing to issue the licence; or
- (g) a ground exists that is prescribed as a ground for refusing to renew or for revoking a licence.

### **Notice of proposal**

**260 (1)** The Director shall notify the applicant or licensee, as the case may be, in writing if the Director proposes to,

- (a) refuse to issue a licence under section 258; or
- (b) revoke or refuse to renew a licence under section 259.

### **Contents of notice**

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 262 (2).

### **Suspension**

**261 (1)** A Director may suspend a licence if, in the Director's opinion, the manner in which the children's residence is operated or residential care is provided is an immediate threat to the health, safety or welfare of the children.

### **Notice**

(2) The Director shall notify the licensee in writing of the suspension.

### **Contents of notice**

(3) The notice shall set out the reasons for the suspension and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with subsection 262 (2).

### **Suspension takes effect upon notice**

(4) A suspension takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

### **No application**

(5) No person whose licence is suspended may apply to a Director for a licence during the suspension.

## **HEARINGS BY TRIBUNAL**

### **Hearings by Tribunal**

**262 (1)** An applicant or licensee to whom any of the following notices is given by a Director may request a hearing by the Tribunal in accordance with subsection (2):

1. A notice of proposal to refuse to issue a licence under section 258.
2. A notice of proposal to revoke or refuse to renew a licence under section 259.
3. A notice to impose or amend conditions on a licence under section 252.
4. A notice to suspend a licence under section 261.

**Request for hearing**

(2) The applicant or licensee may request a hearing by giving a written request to the Director who gave the notice referred to in subsection (1), and to the Tribunal,

- (a) in the case of a notice to impose or amend conditions on a licence, within 15 days after the person is given the notice; or
- (b) in the case of all other notices, within 10 days after the person is given the notice.

**If hearing regarding proposal is not requested**

(3) If an applicant or licensee to whom a notice of proposal to refuse to issue a licence or to revoke or refuse to renew a licence is given does not request a hearing in accordance with subsection (2), the Director may carry out the proposal.

**Hearing**

(4) If an applicant or licensee requests a hearing in accordance with subsection (2), the Tribunal shall appoint a time for and hold a hearing.

**Powers of tribunal**

(5) After holding the hearing, the Tribunal may by order,

- (a) in the case of a proposal to refuse to issue a licence or to revoke or refuse to renew a licence,
  - (i) direct the Director to carry out the proposal, or
  - (ii) direct the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations;
- (b) in the case of the imposition or amendment of conditions on a licence,
  - (i) confirm any or all of the conditions,
  - (ii) strike out any or all of the conditions, or
  - (iii) impose such other conditions as the Tribunal considers appropriate; or
- (c) in the case of the suspension of a licence,
  - (i) confirm the suspension, or
  - (ii) direct the Director to take such other action as the Tribunal considers appropriate, in accordance with this Part and the regulations.

**Discretion of tribunal**

(6) In making an order under clause (5) (a) or (c), the Tribunal may substitute its opinion for that of the Director.

**Rules for proceedings****Parties**

**263** (1) The following persons are parties to a proceeding under this Part:

- 1. The applicant or licensee requiring the hearing.
- 2. The Director.
- 3. Any other person specified by the Tribunal.

**Members with prior involvement**

(2) A member of the Tribunal who has taken part, before a hearing, in any investigation or consideration of its subject matter that relates to the applicant or licensee shall not take part in the hearing.

**Discussion of subject matter of hearing**

(3) A member of the Tribunal who takes part in a hearing shall not communicate with any person, except another member, a lawyer who is not the lawyer of any party, or an employee of the Tribunal, about the subject matter of the hearing, unless all parties are notified and given an opportunity to participate.

**When Tribunal seeks independent legal advice**

(4) The Tribunal may seek independent legal advice about the subject matter of a hearing and, if it does so, shall disclose the nature of the advice to the parties to enable them to respond.

### **Examination of documentary evidence**

(5) A party to a proceeding under this Part shall be given an opportunity, before the hearing, to examine any written or documentary evidence that will be produced and any report whose contents will be given in evidence at the hearing.

### **Only members at entire hearing to participate in decision**

(6) No member of the Tribunal shall participate in a decision of the Tribunal under this Part unless the member was present throughout the hearing and heard the evidence and arguments of the parties.

### **All members at hearing to participate in decision**

(7) Unless the parties consent, the Tribunal shall not make a decision under this Part unless all the members who were present at the hearing participate in the decision.

### **Final decision of Tribunal within 90 days**

(8) Despite section 21 of the *Statutory Powers Procedure Act*, the Tribunal shall make a final decision and notify the parties of it within 90 days after the day the Tribunal receives the applicant's or licensee's request for a hearing under subsection 262 (2) of this Act.

## **APPEALS**

### **Appeal from Tribunal**

**264** (1) Any party to a hearing before the Tribunal under this Part may appeal from the Tribunal's decision to the Divisional Court.

### **Record to be filed in the court**

(2) If notice of an appeal is served under this section, the Tribunal shall promptly file with the court the record of the proceeding in which the decision appealed from was made.

### **~~Minister entitled to be heard~~**

~~(3) The Minister is entitled to be heard, by counsel or otherwise, on the argument of an appeal under this section.~~

### **Minister entitled to be heard**

(3) The Minister, represented by a lawyer or otherwise, is entitled to be heard on the argument of an appeal under this section.

## **AMOUNT CHARGED BY LICENSEE**

### **Amount**

**265** (1) A licensee shall charge the amount set out in or determined in accordance with the regulations for the provision of residential care under the authority of a licence.

### **Exemption**

(2) A regulation may exempt a licensee or class of licensees from subsection (1) and may prescribe conditions and circumstances for any such exemption.

## **LICENSEE CEASING TO OPERATE, ETC.**

### **Licence and records to be delivered**

**266** If a licence is revoked or renewal of it refused, or if a licensee ceases to operate a children's residence or to provide residential care, the licensee shall,

- (a) promptly deliver the licence to the Minister; and
- (b) deliver all the records in the licensee's possession or control that relate to the children to whom services were being provided to a prescribed person or entity within the prescribed time.

### **Notice to placing agency or other person; removal of children**

**267** If a licence is revoked or suspended or renewal of it refused, or if a licensee ceases to operate a children's residence or to provide residential care,

- (a) the licensee shall promptly notify, in writing, every placing agency or person who has a child placed in the children's residence or other place where residential care is provided of the revocation, suspension, refusal or cessation; and
- (b) the placing agency or person who placed a child shall arrange for the child's removal from the residence or other place as soon as is practicable, having regard to the child's best interests, and the Minister may assist in finding an alternative placement for the child.



## OCCUPATION BY MINISTER AND INJUNCTIONS

**Order for Minister's occupation**

**268** (1) If a Director's notice of proposal to revoke or refuse to renew a licence under clause 260 (1) (b) or notice of suspension under subsection 261 (2) has been given to a licensee and the matter has not yet been finally disposed of, the Minister may apply without notice to the Superior Court of Justice for an order,

- (a) authorizing the Minister or a person appointed by the Minister, pending the outcome of the proceeding and until alternative accommodation may be found for the children who are being cared for, to,
  - (i) occupy and operate the children's residence or the other premises where residential care is provided, or
  - (ii) provide the residential care, directly or indirectly; and
- (b) directing a peace officer to assist the Minister or a person appointed by the Minister as may be necessary in occupying the premises under subclause (a) (i).

**Where court may make order**

(2) The court may make an order referred to in subsection (1) where it is satisfied that the health, safety or welfare of the children being cared for require it.

**Interim management**

(3) If an order described in subclause (1) (a) (i) has been made, the Minister or the person appointed by the Minister may, despite sections 25 and 39 of the *Expropriations Act*, immediately occupy and operate or arrange for the occupation and operation of the premises for a period not exceeding six months.

**Injunction**

**269** (1) A Director may apply to the Superior Court of Justice for an order enjoining any person from,

- (a) contravening section 241 (licence required); or
- (b) operating a children's residence or providing residential care while the licence is suspended under section 261.

**Variance or discharge**

(2) Any person may apply to the court for an order varying or discharging an order made under subsection (1).

## RESIDENTIAL LICENSING INSPECTIONS

**Appointment of inspectors**

**270** (1) The Minister may appoint inspectors for the purposes of this Part.

**Director is an inspector**

(2) A Director is, by virtue of their office, an inspector.

**Powers and duties**

(3) An inspector shall have the powers and duties set out in this Part and such other powers and duties as may be prescribed.

**Restrictions**

(4) The Minister may restrict an inspector's powers of entry and inspection to specified premises.

**Certificate of appointment**

(5) The Minister shall issue to every inspector a certificate of appointment which the inspector shall produce, on request, when exercising the powers or performing the duties of an inspector.

**Purpose of inspection**

**271** An inspector shall conduct inspections for the purpose of determining compliance with this Act, the regulations and the directives.

**Inspections without warrant**

**272** An inspector may, at any reasonable time and without a warrant or notice, enter and inspect,

- (a) the business premises of a licensee;
- (b) the premises of a children's residence;
- (c) a premises, other than a children's residence, where residential care is provided under the authority of a licence; or
- (d) a premises where the inspector suspects on reasonable grounds that residential care is provided without the authority of a licence, where a licence is required under this Part.

### **Powers on inspection**

**273 (1)** An inspector conducting an inspection may,

- (a) examine the services provided;
- (b) examine a record or other thing that is relevant to the inspection;
- (c) demand the production for inspection of a record or other thing that is relevant to the inspection, including a record or other thing that is not kept on the premises;
- (d) on issuing a written receipt, remove for review or copying a record or other thing that is relevant to the inspection;
- (e) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business at the premises;
- (f) photograph, film or make any other kind of recording that is relevant to the inspection, including of a child or other person at the premises, but only in a manner that does not intercept any private communications and that is in keeping with reasonable expectations of privacy;
- (g) question a person, including a child, on matters relevant to the inspection;
- (h) call upon experts for assistance in carrying out the inspection; and
- (i) exercise any other prescribed power.

### **Demand**

(2) A demand that a record or other thing be produced for inspection may be made ~~verbally~~orally or in writing and must indicate,

- (a) the nature of the record or thing required; and
- (b) when the record or thing is to be produced.

### **Obligation to produce and assist**

(3) If an inspector demands that a record or other thing be produced for inspection, the person having custody of the record or other thing shall produce it for the inspector within the time provided for in the demand, and shall, on the inspector's demand,

- (a) provide whatever assistance is reasonably necessary to produce the record or thing in readable form, including using a data storage, processing or retrieval device or system; and
- (b) provide whatever assistance is reasonably necessary to interpret the record or thing for the inspector.

### **Child's right to refuse**

(4) Despite clause (1) (g), a child may refuse to be questioned by an inspector.

### **Child's right to meet with inspector**

(4.1) An inspector shall meet privately with a child who is receiving residential care in the place being inspected, if the child requests such a meeting.

### **Power to exclude persons**

(5) An inspector who questions a person under clause (1) (g) may exclude from questioning any person except ~~counsel~~a lawyer for the person being questioned.

### **Return of things**

(6) A record or other thing that has been removed for review or copying,

- (a) shall be made available to the person from whom it was removed on request and at a time and place that are convenient for the person and the inspector; and
- (b) shall be returned to the person within a reasonable time.

### **Warrant**

**274 (1)** An inspector may, without notice, apply to a justice for a warrant under this section.

### **Issuance of warrant**

(2) A justice may issue a warrant authorizing an inspector named in the warrant to enter the premises specified in the warrant, and to exercise any of the powers mentioned in subsection 273 (1), if the justice is satisfied on information under oath or affirmation,

- (a) that the premises,

- (i) is the business premises of a licensee,
  - (ii) is a children's residence,
  - (iii) is a place, other than a children's residence, where residential care is provided under the authority of a licence, or
  - (iv) is a place where the inspector suspects on reasonable grounds that residential care is provided without the authority of a licence, where a licence is required under this Part; and
- (b) that,
- (i) the inspector has been prevented from exercising a right of entry to the premises under section 272 or a power under subsection 273 (1), or
  - (ii) there are reasonable grounds to believe that the inspector will be prevented from exercising a right of entry to the premises under section 272 or a power under subsection 273 (1).

### **Dwellings**

(3) The power to enter a premises described in clause (2) (a) with a warrant shall not be exercised to enter a premises that is used as a dwelling, except if,

- (a) the justice is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice authorizes the entry into the dwelling.

### **Expert help**

(4) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the inspector in the execution of the warrant.

### **Expiry of warrant**

(5) A warrant issued under this section shall name a date on which it expires, which shall be no later than 30 days after the warrant is issued.

### **Extension of time**

(6) A justice may extend the date on which a warrant issued under this section expires for an additional period of no more than 30 days, upon application without notice by the inspector named in the warrant.

### **Use of force**

(7) An inspector named in a warrant issued under this section may use whatever force is necessary to execute the warrant and may call upon a peace officer for assistance in executing the warrant.

### **Time of execution**

(8) A warrant issued under this section may be executed between 8 a.m. and 8 p.m. only, unless the warrant specifies otherwise.

### **Other matters**

(9) Subsections 273 (2) to (6) apply, with necessary modifications, with respect to the exercise of powers referred to in subsection (2) under a warrant issued under this section.

### **Definition**

(10) In this section,

“justice” means a provincial judge or a justice of the peace.

### **Inspection report**

**275** (1) After completing an inspection, an inspector shall prepare an inspection report and give a copy of the report to,

- (a) a Director;
- (b) the licensee; and
- (c) any other prescribed person.

### **All non-compliance to be documented**

(2) If an inspector finds that a licensee has not complied with a requirement of this Act, the regulations or a directive, the inspector shall document the non-compliance in the inspection report.

### **Admissibility of certain documents**

**276** A copy made under subsection 273 (1) that purports to be certified by the inspector as being a true copy of the original is admissible in evidence in any proceeding to the same extent as, and has the same evidentiary value as, the original.



## OFFENCES

### Offences

**277 (1)** A person is guilty of an offence if the person,

- (a) contravenes subsection 241 (1) (licence required);
- (b) contravenes section 242 (prohibition — past offence);
- (c) contravenes section 243 (prohibition — holding out as licensed);
- (d) contravenes subsection 256 (3) (licensee must comply with maximum number of children);
- (e) contravenes clause 266 (b) (records to be delivered);
- (f) causes a child to be cared for in a children's residence operated by a person who is not licensed, or in another place where residential care is provided by a person who is required to be but is not licensed to provide residential care;
- (g) is a child's parent or a person under a legal duty to provide for the child and permits the child to be cared for in a children's residence or other place referred to in clause (f);
- (h) fails to comply with an order or direction made by a court under this Part;
- (i) contravenes any other provision of this Act or the regulations prescribed for the purposes of this subsection.

### Penalty

**(2)** A person convicted of an offence under subsection (1) is liable to,

- (a) a fine of not more than \$1,000 for each day on which the offence continues or imprisonment for a term of not more than one year or both, in the case of an individual; or
- (b) a fine of not more than \$1,000 for each day on which the offence continues, if the person is not an individual.

### Offence — obstruction of inspector, false information, etc.

**(3)** A person is guilty of an offence if the person,

- (a) hinders, obstructs, or interferes with an inspector conducting an inspection under this Part, or otherwise impedes an inspector in exercising the powers or performing the duties of an inspector under this Part.
- (b) knowingly provides false information in an application under this Part or in a statement, report or return required to be provided under this Part or the regulations; or
- (c) contravenes any other provision of this Act or the regulations prescribed for the purposes of this subsection.

### Penalty

**(4)** A person convicted of an offence under subsection (3) is liable to a fine of not more than \$5,000.

### Limitation

**(5)** A proceeding in respect of an offence under subsection (1) or (3) shall not be commenced more than two years after the day on which evidence of the offence first came to the knowledge of the Director or inspector.

### Directors, officers and employees

**(6)** If a corporation commits an offence under this section, a director, officer or employee of the corporation who authorized, permitted or concurred in the commission of the offence is also guilty of the offence.

## PART X PERSONAL INFORMATION

### DEFINITIONS

### Definitions

**278** In this Part,

“Assistant Commissioner” means an Assistant Commissioner appointed under the *Freedom of Information and Protection of Privacy Act*; (“commissaire adjoint”)

“capable” means able to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure of personal information and able to appreciate the reasonably foreseeable consequences of giving, withholding or withdrawing the consent and “capacity” has a corresponding meaning; (“capable”)

“Commissioner” means the Information and Privacy Commissioner appointed under the *Freedom of Information and Protection of Privacy Act*; (“commissaire”)

“incapable” means not capable, and “incapacity” has a corresponding meaning; (“incapable”)

“information practices” means the policy or policies respecting the collection, use, modification, disclosure, retention or disposal of personal information and the administrative, technical and physical safeguards and practices that the service provider maintains with respect to the information; (“pratiques relatives aux renseignements”)

“proceeding” includes a proceeding held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College within the meaning of the *Regulated Health Professions Act, 1991*, a committee of the Ontario College of Social Workers and Social Service Workers under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator; (“instance”)

“service” means a service or program that is provided or funded under this Act or provided under the authority of a licence; (“service”)

“service provider” includes a lead agency designated under section 29; (“fournisseur de services”)

“substitute decision-maker” means a person who is authorized under this Part to consent, withhold or withdraw consent on behalf of an individual to the collection, use or disclosure of personal information about the individual. (“mandataire spécial”)

### **Confidentiality provisions prevail**

**278.1** Subsections 85 (8), (9) and (10) and 131 (11) prevail over this Part.

## MINISTER’S POWERS TO COLLECT, USE AND DISCLOSE PERSONAL INFORMATION

### **Collection, use and disclosure of personal information by the Minister**

#### **Collection of personal information**

**279** (1) The Minister may collect personal information, directly or indirectly, for purposes related to the following matters, and may use it for those purposes:

1. Administering this Act and the regulations.
2. Determining compliance with this Act and the regulations.
3. Planning, managing or delivering services that the Ministry provides or funds, in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring and preventing fraud or any unauthorized receipt of services or benefits related to any of them.
4. Conducting risk management and error management activities in respect of the services that the Ministry provides or funds, in whole or in part.
5. Conducting activities to improve or maintain the quality of the services that the Ministry provides or funds, in whole or in part.
6. Conducting research and analysis that relate to children and their families, including longitudinal studies, by or on behalf of the Ministry that relate to,
  - i. a service,
  - ii. the transition of children and their families between and out of services, including the resulting outcomes, or
  - iii. programs that support the learning, development, health and well-being of children and their families, including programs provided or funded in whole or in part by the Ministry or any other ministry of the Government of Ontario.

#### **Personal information required by Minister**

(2) The Minister may require any of the following persons to disclose to the Minister such personal information as is reasonably necessary for the purposes described in subsection (1):

1. A service provider.
2. Any other prescribed person who has information that is relevant to any of the purposes described in subsection (1).

#### **Information other than personal information**

~~(3) The Minister shall not collect or use personal information if other information will serve the purpose of the collection or use.~~

#### **Personal information limited to what is reasonably necessary**

~~(4) The Minister shall not collect or use more personal information than is reasonably necessary to meet the purpose of the collection or use.~~

### **Information other than personal information**

(3) The Minister shall not collect, use or disclose personal information if other information will serve the purpose of the collection, use or disclosure.

### **Personal information limited to what is reasonably necessary**

(4) The Minister shall not collect, use or disclose more personal information than is reasonably necessary to meet the purpose of the collection, use or disclosure.

### **Sharing with other ministers**

(5) The Minister and ~~other ministers~~ other ministers of the Crown in right of Ontario who may be prescribed may disclose personal information to and indirectly collect personal information from each other for the purposes set out in paragraphs 3 and 6 of subsection (1).

### **~~Deemed compliance~~**

~~(6) A disclosure of personal information under subsection (5) is deemed to be for the purposes of complying with this Act.~~

### **Deemed compliance**

(6) For the purpose of clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*, clause 32 (e) of the *Municipal Freedom of Information and Protection of Privacy Act* or clause 43 (1) (h) of the *Personal Health Information Protection Act, 2004*, a disclosure of personal information by an institution or a health information custodian, within the meaning of those Acts, under subsection (2) or (5) is deemed to be for the purposes of complying with this Act.

### **Personal information for research**

(7) The collection, use or disclosure of personal information to conduct research and analysis described in paragraph 6 of subsection (1) is subject to any requirements and restrictions that may be prescribed.

### **Notice required by s. 39 (2) of FIPPA**

(8) If the Minister collects personal information indirectly under subsection (1), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* may be given by,

- (a) a public notice posted on a government of Ontario website; or
- (b) any other method that may be prescribed.

### **Information requested by Minister**

#### **Collection of information by service providers**

**280** (1) The Minister may request that a service provider collect information, including personal information, directly from the individuals to whom it provides a service as is reasonably necessary for a prescribed purpose that is consistent with a purpose described in subsection 279 (1) and, upon being so requested, a service provider shall collect the information directly from the individuals.

#### **Disclosure to Minister**

(2) A service provider shall disclose the information collected under subsection (1) to the Minister within the time period and in the form and manner specified by the Minister.

### **Notice required by s. 39 (2) of FIPPA**

~~(3) If the Minister publishes a notice referred to in subsection 279 (8), the Minister shall advise the service provider of the notice and the service provider shall advise the individual to whom it provides a service of the information set out in the notice in the form and manner specified by the Minister.~~

### **Notice required by s. 39 (2) of FIPPA**

(3) If the Minister collects personal information indirectly under subsection (1), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* may be given by,

- (a) a public notice posted on a government of Ontario website; or
- (b) any other method that may be prescribed.

### **Notice to and by service providers**

(4) The Minister shall advise a service provider that collected personal information under subsection (1) of the notice referred to in subsection (3) and the service provider shall advise the individual to whom it provides a service of the information set out in the notice in the form and manner specified by the Minister.



## COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION BY SERVICE PROVIDERS

### Application of Part

**281** (1) Subject to subsections (2), (3), (4), (5) and (7), sections 282 to 310 apply to the collection, use and disclosure of personal information by a service provider.

#### Exceptions — where other Acts apply to an institution

(2) Sections 282 to 288 and 299 to 310 do not apply to an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*.

#### Exceptions — where other Acts apply to a health information custodian

(3) Sections 282 to 288 and 291 to 310 do not apply to a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* in respect of the collection, use or disclosure of personal health information.

#### Exceptions — adoption matters

(4) Sections 282 to 310 do not apply to,

- (a) the use or disclosure under section 224 by a licensee or a society of information that relates to an adoption; or
- (b) the collection, use or disclosure of information given to a designated custodian under section 221 or to another person under section 222.

#### Exceptions — other matters

(5) Sections 282 to 310 do not apply to,

- (a) records in the register maintained under subsection 130 (5);
- ~~— (b) information that is subject to a publication ban set out in subsection 85 (8), (9) or (10) or 131 (11);~~
- (c) records to which subsection 127 (6) or (8) apply;
- (d) reports for which an order was made under subsection 160 (6).

### Service provider's records

(6) Except if this Act or its regulations provide otherwise, this Part applies to any record in the custody or under the control of a service provider regardless of whether it was recorded before or after this Part comes into force.

### Where disclosure is prohibited under federal law

(7) For greater certainty, nothing in this Part permits or requires the disclosure of information whose disclosure is prohibited under the *Criminal Code* (Canada), the *Youth Criminal Justice Act* (Canada) or any other law of Canada.

### Collection, use and disclosure of personal information — requirement for consent

**282** A service provider shall not collect personal information about an individual for the purpose of providing a service or use or disclose that information unless,

- (a) the service provider has the individual's consent under this Act and the collection, use or disclosure, to the best of the service provider's knowledge, is necessary for a lawful purpose; or
- (b) the collection, use or disclosure without the individual's consent is permitted or required by this Act.

### Collection, use and disclosure of information other than personal information

**283** (1) A service provider shall not collect personal information for the purposes of providing a service or use or disclose that personal information if other information will serve the purpose of the collection, use or disclosure.

### Collection, use and disclosure of personal information limited to what is reasonably necessary

(2) For the purposes of providing a service, a service provider shall not collect, use or disclose more personal information than is reasonably necessary to provide the service.

### Exception

(3) This section does not apply to personal information that a service provider is required by law to collect, use or disclose.

### Indirect collection of personal information

#### With consent

**284** (1) A service provider may collect personal information indirectly for the purpose of providing a service if the individual to whom the information relates consents to the collection being made indirectly.

### Without consent

(2) A service provider may collect personal information indirectly for the purpose of providing a service and without the consent of the individual to whom the information relates if,

- ~~— (a) the information to be collected is reasonably necessary to provide a service and it is not reasonably possible to collect personal information directly from the individual,~~
  - ~~— (i) that can reasonably be relied on as accurate and complete, or~~
  - ~~— (ii) in a timely manner;~~
- ~~— (b) the information is to be collected by a society from another society or from a child welfare authority outside of Ontario and the information,~~
  - ~~— (i) is reasonably necessary to assess whether a child may be at risk of harm, or~~
  - ~~— (ii) is necessary for a prescribed purpose related to a society's functions under subsection 34 (1);~~
- (a) the information to be collected is reasonably necessary to provide a service or to assess, reduce or eliminate a risk of serious harm to a person or group of persons and it is not reasonably possible to collect personal information directly from the individual,
  - (i) that can reasonably be relied on as accurate and complete, or
  - (ii) in a timely manner;
- (b) the information is to be collected by a society from another society or from a child welfare authority outside of Ontario and the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child;
- (b.1) the information is to be collected by a society and the information is reasonably necessary for a prescribed purpose related to a society's functions under subsection 34 (1);
- (c) the indirect collection of information is authorized by the Commissioner; or
- (d) subject to the requirements and restrictions, if any, that are prescribed, the indirect collection of information is permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada.

### Direct collection without consent

~~285 A service provider may collect personal information directly from the individual to whom the information relates, even if the individual is not capable, if the collection is reasonably necessary for the provision of a service and it is not reasonably possible to obtain consent in a timely manner or the collection is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons.~~

### Direct collection without consent

285 A service provider may collect personal information directly from the individual to whom the information relates, even if the individual is not capable, if,

- (a) the collection is reasonably necessary for the provision of a service and it is not reasonably possible to obtain consent in a timely manner;
- (b) the collection is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons; or
- (c) the service provider is a society and the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child.

### Notice to individual re use or disclosure of information

286 Where a service provider collects personal information directly from an individual, the service provider shall give the individual notice that the information may be used or disclosed in accordance with this Part.

### Permitted use

287 (1) A service provider may use personal information collected for the purpose of providing a service,

- (a) for the purpose for which the information was collected or created and for all the functions reasonably necessary for carrying out that purpose, including providing the information to an officer, employee, consultant or agent of the service provider, but not if the information was collected with the consent of the individual or under clause 284 (2) (a) and the individual expressly instructs otherwise;
- (b) if the service provider believes on reasonable grounds that the use is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons;

- (c) for a purpose for which this Act, another Act or an Act of Canada permits or requires a person to disclose it to the service provider;
- (d) for planning, managing or delivering services that the service provider provides or funds, in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them;
- (e) for the purpose of risk management and error management activities;
- (f) for the purpose of activities to improve or maintain the quality of a service;
- (g) for the purpose of disposing of the information or modifying the information in order to conceal the identity of the individual;
- (h) for the purpose of seeking the individual's consent, or the consent of the individual's substitute-decision maker, when the personal information used by the service provider for this purpose is limited to the name and contact information of the individual and the name and contact information of the substitute decision-maker, where applicable;
- (i) for the purpose of a proceeding or contemplated proceeding in which the service provider or ~~an employee, agent or former employee or agent of the service provider~~ an officer, employee, agent or former officer, employee or agent of the service provider is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;
- (j) for research conducted by the service provider, subject to the requirements and restrictions, if any, that may be prescribed; or
- (k) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada.

#### **Exception**

~~(2) Despite clause (1) (a), where the individual to whom the personal information relates expressly instructs otherwise, a society may nonetheless use that personal information for a purpose related to a society's functions under subsection 34 (1) where it is in the best interests of a child to do so.~~

#### **Exception**

(2) Despite clause (1) (a), where the individual to whom the personal information relates expressly instructs otherwise,

- (a) a society may nonetheless use that personal information,
  - (i) if it is reasonably necessary to assess, reduce or eliminate a risk of harm to a child, or
  - (ii) for a prescribed purpose related to a society's functions under subsection 34 (1); and
- (b) a service provider may nonetheless use that personal information if it is reasonably necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons.

#### **Disclosure without consent**

**288** (1) A service provider may, without the consent of the individual, disclose personal information about an individual that has been collected for the purpose of providing a service,

- (a) to a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or to allow the agency to determine whether to undertake such an investigation;
- (b) to a proposed litigation guardian or legal representative of the individual for the purpose of having the person appointed as such;
- (c) to a litigation guardian or legal representative who is authorized under the Rules of Civil Procedure, or by a court order, to commence, defend or continue a proceeding on behalf of the individual or to represent the individual in a proceeding;
- (d) for the purpose of contacting a relative, member of the extended family, friend or potential substitute decision-maker of the individual, if the individual is injured, incapacitated or otherwise not capable;
- (e) for the purpose of contacting a relative, member of the extended family or friend of the individual if the individual is deceased;
- ~~(f) for the purpose of complying with,~~
- (f) subject to section 290, for the purpose of complying with,
  - (i) a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel the production of information, or



- (ii) a procedural rule that relates to the production of information in a proceeding;
- (g) if the service provider believes on reasonable grounds that the disclosure is necessary to assess, reduce or eliminate a risk of serious harm to a person or group of persons; or
- (h) if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada, subject to the requirements and restrictions, if any, that are prescribed.

**To assess if a child may be in need of protection**

~~(2) A society may disclose to another society or to a child welfare authority outside Ontario personal information that has been collected for the purpose of providing a service if the information,~~

- ~~— (a) is reasonably necessary to assess whether a child may be at risk of harm; or~~
- ~~— (b) is necessary for a prescribed purpose related to a society's functions under subsection 34 (1).~~

**To assess, etc. risk of harm to a child**

(2) A society may disclose to another society or to a child welfare authority outside Ontario personal information that has been collected for the purpose of providing a service if the information is reasonably necessary to assess, reduce or eliminate a risk of harm to a child.

**For a prescribed purpose related to society's functions**

(2.1) A society may disclose personal information that has been collected for the purpose of providing a service if the information is reasonably necessary for a prescribed purpose related to a society's functions under subsection 34 (1).

**Definition**

(3) In this section,

“law enforcement” has the same meaning as in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*.

**Disclosure for planning and managing services, etc.**

**Disclosure to prescribed entity**

**289** (1) A service provider may disclose personal information collected by the service provider under the authority of this Act to a prescribed entity for the purposes of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of services, the allocation of resources to or planning for those services, including their delivery, if the prescribed entity meets the requirements under subsection (5).

**Disclosure to other person or entity**

(2) A service provider may, subject to the prescribed requirements and restrictions, disclose personal information collected by the service provider under the authority of this Act to a person or entity that is not a prescribed entity for the purposes described in subsection (1) and a person or entity to whom a service provider discloses personal information under this subsection shall comply with any prescribed requirements and restrictions with respect to the use, security, disclosure, return or disposal of the information.

**~~Minister may require disclosure~~**

~~(3) The Minister may require a service provider to disclose information, including personal information, to a prescribed entity or to a person or entity that is not a prescribed entity, for the purposes described in subsection (1) and a person or entity (including a prescribed entity) to whom a service provider discloses information under this subsection shall comply with any prescribed requirements and restrictions with respect to the use, security, disclosure, return or disposal of the information.~~

**Minister may require disclosure**

(3) The Minister may require a service provider to disclose information, including personal information, to a prescribed entity, if the prescribed entity meets the requirements under subsection (5), or to a person or entity that is not a prescribed entity, for the purposes described in subsection (1) and a person or entity, including a prescribed entity, to whom a service provider discloses information under this subsection shall comply with any prescribed requirements and restrictions with respect to the use, security, disclosure, return or disposal of the information.

**Exception**

(4) Subsections (1), (2) and (3) do not apply to prescribed information in prescribed circumstances.

**Requirements for prescribed entity**

(5) A service provider may disclose personal information to a prescribed entity under subsection (1) if:

- (a) the prescribed entity has in place practices and procedures to protect the privacy of the individuals whose personal information it receives and to maintain the confidentiality of the information; and
- (b) the Commissioner has approved the practices and procedures.

**Requirements for prescribed entity**

(5) A service provider may disclose personal information to a prescribed entity under subsection (1) or (3) if,

- (a) the prescribed entity has in place practices and procedures to protect the privacy of the individuals whose personal information it receives and to maintain the confidentiality of the information; and
- (b) the Commissioner has approved the practices and procedures.

**Exception**

~~(6) Despite clause (5) (b), a service provider may disclose personal information to a prescribed entity under subsection (1) before the first anniversary of the day this section comes into force even if the Commissioner has not approved its practices and procedures.~~

**Exception**

(6) Despite clause (5) (b), a service provider may disclose personal information to a prescribed entity under subsection (1) or (3) before the first anniversary of the day this section comes into force even if the Commissioner has not approved its practices and procedures.

**Review of practices and procedures by Commissioner**

(7) The Commissioner shall review the practices and procedures of each prescribed entity every three years after they were first approved and advise the service provider whether the prescribed entity continues to meet the requirements of subsection (5).

**Prescribed entity may collect personal information**

~~(8) A prescribed entity is authorized to collect the personal information that a service provider may disclose to it under subsection (1).~~

**Prescribed entity or other person or entity may collect personal information**

(8) A prescribed entity or a person or entity that is not a prescribed entity is authorized to collect the personal information that a service provider may disclose to it under subsection (1), (2) or (3).

**Use and disclosure of personal information by prescribed entity, other person or entity**

(9) Subject to the exceptions and additional requirements, if any, that are prescribed, a prescribed entity or a person or entity that is not a prescribed entity that receives personal information under subsection (1), (2) or (3) shall not use the information except for the purposes for which it received the information and shall not disclose the information except as required by law.

**Deemed compliance**

(10) For the purpose of clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*, clause 32 (e) of the *Municipal Freedom of Information and Protection of Privacy Act* or clause 43 (1) (h) of the *Personal Health Information Protection Act, 2004*, a disclosure of personal information by an institution or a health information custodian, within the meaning of those Acts, under this section is deemed to be for the purposes of complying with this Act.

**Records of mental disorders****Definitions**

290 (1) In this section,

“court” includes the Divisional Court; (“tribunal”)

“record of a mental disorder” means a record or a part of a record made about an individual concerning a substantial disorder of the individual’s emotional processes, thought or cognition which grossly impairs the individual’s capacity to make reasoned judgments. (“dossier relatif à un trouble mental”)

**Disclosure pursuant to summons, etc.**

(2) A service provider shall disclose, transmit or permit the examination of a record of a mental disorder pursuant to a summons, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court or other body unless a physician states in writing that the physician believes that to do so,

- (a) is likely to detrimentally affect the treatment or recovery of the individual to whom the record relates; or
- (b) is likely to result in,
  - (i) injury to the mental condition of another individual, or
  - (ii) bodily harm to another individual.

### **Court or body to determine whether to disclose**

(3) Where the disclosure, transmittal or examination of a record of a mental disorder is required by a court or body before which a matter is in issue, the court or body shall determine whether the record referred to in the physician's statement should be disclosed, transmitted or examined.

### **Hearing**

(4) Before making a determination under subsection (3), the court or body shall give notice to the physician and, if the court or body holds a hearing to determine whether the record should be disclosed, transmitted or examined, it shall be held in the absence of the public.

### **Matters to be considered**

(5) In making a determination under subsection (3), the court or body shall consider whether or not the disclosure, transmittal or examination of the record of a mental disorder referred to in the physician's statement is likely to have a result described in clause (2) (a) or (b) and, for that purpose, the court or body may examine the record.

### **Order**

(6) The court or body shall not order that the record of a mental disorder referred to in the physician's statement be disclosed, transmitted or examined if the court or body is satisfied that a result described in clause (2) (a) or (b) is likely, unless satisfied that to do so is essential in the interests of justice.

### **Conflict**

(7) Subsections (2) to (6) apply despite anything in the *Personal Health Information Protection Act, 2004*.

### **Return of record to service provider**

(8) Where a record of a mental disorder is ordered to be disclosed, transmitted or examined under this section, the clerk of the court or body in which it is admitted in evidence or, if not so admitted, the person to whom the record is transmitted, shall return the record to the service provider as soon as possible after the determination of the matter in issue in respect of which the record was required.

## **CONSENT**

### **Elements of consent for collection, use and disclosure of personal information**

**291** (1) If this Act or any other Act requires the consent of an individual to the collection, use or disclosure of personal information by a service provider, the consent,

- (a) must be a consent of the individual;
- (b) must be knowledgeable;
- (c) must relate to the information; and
- (d) must not be obtained through deception or coercion.

### **Implied consent for collection and use**

(2) A consent to the collection and use of personal information may be implied if the collection is made directly from the individual to whom the information relates and is collected for the purpose of providing a service.

### **Consent may be written or oral**

(3) A consent may be written or oral, but an oral consent may be relied on only if the service provider that obtains the consent makes a written record that sets out the following information:

- 1. The name of the individual who gave the consent.
- 2. The information to which the consent relates.
- 3. The manner in which the notice of purposes required by subsection (5) was provided to the individual.

### **Knowledgeable consent**

(4) A consent to the collection, use or disclosure of personal information is knowledgeable if it is reasonable in the circumstances to believe that the individual to whom the information relates knows,

- (a) the purposes of the collection, use or disclosure; and
- (b) that the individual may give, withhold or withdraw consent.

### **Notice of purposes**

(5) Unless it is not reasonable in the circumstances, an individual is deemed to know the purposes of the collection, use or disclosure of personal information about the individual if the service provider,



- (a) posts a notice describing the purposes where it is likely to come to the individual's attention;
- (b) makes such a notice readily available to the individual;
- (c) gives the individual a copy of such notice; or
- (d) otherwise communicates the content of such notice to the individual.

### **Transition**

(6) A consent that an individual gives, before the day that subsection (1) comes into force, to a collection, use or disclosure of personal information is a valid consent if it meets the requirements of this section for consent.

### **Withdrawal of consent**

292 A consent may be withdrawn by the individual who gave the consent by providing notice to the service provider, but the withdrawal of the consent shall not have retroactive effect.

### **Conditional consent**

293 If an individual places a condition on their consent to the collection, use or disclosure of personal information, the condition is not effective to the extent that it purports to prohibit or restrict the making of any record of personal information by a service provider that is required by law or by established standards of professional or institutional practice.

### **Presumption of consent's validity**

294 A service provider that has obtained an individual's consent to the collection, use or disclosure of personal information about the individual or who has received a copy of a document purporting to be a record of the individual's consent, may presume that the consent fulfils the requirements of this Act and that the individual has not withdrawn it, unless it is not reasonable to do so.

## **CAPACITY AND SUBSTITUTE DECISION-MAKING**

### **Presumption of capacity**

295 An individual is presumed to be capable, and a service provider may rely on this presumption unless the service provider has reasonable grounds to believe that the individual is not capable.

### **Differing capacity**

#### **Re different information**

295.1 (1) An individual may be capable with respect to some parts of personal information, but incapable with respect to other parts.

#### **At different times**

(2) An individual may be capable at one time, but incapable at another time.

### **Substitute decision-maker**

296 (1) An individual who is capable may give, withhold or withdraw consent or may, if the individual is 16 or older, authorize in writing another individual who is 16 or older and capable to be the individual's substitute decision-maker.

### **For child younger than 16**

(2) If the individual is a child younger than 16, the child's parent or a society or other person who is authorized to give, withhold or withdraw consent in the place of the parent may be the child's substitute decision-maker unless the information relates to,

- (a) treatment about which the child has made a decision in accordance with the *Health Care Consent Act, 1996*; or
- ~~(b) counselling in which the child has participated under this Act or the old Act.~~
- (b) counselling to which the child has consented on their own under this Act or the old Act.

### **Capable child prevails over substitute decision-maker**

(3) If the individual is a child younger than 16 who is capable and if there is a person who is authorized to act as the substitute decision-maker of the child under subsection (2), a decision of the child to give, withhold or withdraw the consent prevails over a conflicting decision by the substitute decision-maker.

### **Person authorized under *PHIPA* may be substitute decision-maker**

(4) Where an individual is not capable of consenting to the collection, use or disclosure of personal information, a person who would be authorized to consent to the collection, use or disclosure of personal health information on the individual's behalf under the *Personal Health Information Protection Act, 2004* may be the individual's substitute decision-maker.

### **Factors to consider for consent**

**296.1** (1) A person who consents under this Part on behalf of or in the place of an individual to a collection, use or disclosure of personal information by a service provider, who withholds or withdraws such a consent or who provides an express instruction under clause 287 (1) (a) shall take into consideration,

(a) the wishes, values and beliefs that,

(i) if the individual is capable, the person knows the individual holds and believes the individual would want reflected in decisions made concerning the individual's personal information, or

(ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual's personal information;

(b) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;

(c) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and

(d) whether the collection, use or disclosure is necessary to satisfy any legal obligation.

### **Determination of compliance**

(2) If a substitute decision-maker, on behalf of an incapable individual, gives, withholds or withdraws a consent to a collection, use or disclosure of personal information about the individual by a service provider or provides an express instruction under clause 287 (1) (a) and if the service provider is of the opinion that the substitute decision-maker has not complied with subsection (1), the service provider may apply to a body prescribed for the purposes of this section for a determination as to whether the substitute decision-maker complied with that subsection.

### **Deemed application concerning capacity**

(3) An application to a body prescribed under subsection (2) is deemed to include an application to a prescribed body under subsection 298 (3) with respect to the individual's capacity, unless the individual's capacity has been determined by a prescribed body under section 298 within the previous six months.

### **Parties**

(4) The parties to the application are:

1. The service provider.

2. The incapable individual.

3. The substitute decision-maker.

4. Any other person whom the prescribed body specifies.

### **Power of prescribed body**

(5) In determining whether the substitute decision-maker complied with subsection (1), the prescribed body may substitute its opinion for that of the substitute decision-maker.

### **Directions**

(6) If the prescribed body determines that the substitute decision-maker did not comply with subsection (1), it may give the substitute decision-maker directions and, in doing so, shall take into consideration the matters set out in clauses (1) (a) to (d).

### **Time for compliance**

(7) The prescribed body shall specify the time within which the substitute decision-maker must comply with its directions.

### **Deemed not authorized**

(8) If the substitute decision-maker does not comply with the directions of the prescribed body within the time specified by the prescribed body, the substitute decision-maker is deemed not to meet the requirements of subsection 296 (4).

### **Public Guardian and Trustee**

(9) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, the substitute decision-maker is required to comply with the directions and subsection (7) does not apply to the substitute decision-maker.

### **Procedure**

(10) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.

### **Additional authority of substitute decision-maker**

**297** (1) If this Part permits or requires an individual to make a request, give an instruction or take a step and a substitute decision-maker is authorized to consent or withhold or withdraw consent on behalf of the individual to the collection, use or disclosure of personal information about the individual, the substitute decision-maker may also make the request, give the instruction or take the step on behalf of the individual.

### **References to individual read as substitute decision-maker**

(2) If a substitute decision-maker makes a request, gives an instruction or takes a step under subsection (1) on behalf of an individual, references in this Part to the individual with respect to the request made, the instruction given or the step taken by the substitute decision-maker shall be read as references to the substitute decision-maker, and not to the individual.

### **Determination of incapacity**

**298** (1) A service provider that determines that an individual is incapable shall do so in accordance with the requirements and restrictions, if any, that are prescribed.

### **Information about determination**

~~(2) If it is reasonable in the circumstances, a service provider shall provide the prescribed information to an individual determined to be incapable.~~

### **Information about determination**

~~(2) If it is reasonable in the circumstances, a service provider shall provide, to an individual determined to be incapable, information about the consequences of the determination of incapacity, including the information, if any, that is prescribed.~~

### **Review of determination**

(3) When a service provider determines that an individual is incapable, the individual or a prescribed person may apply to a body prescribed for the purposes of this section for a review of the determination.

### **Review body**

(4) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.

### **Parties**

- (5) The parties to an application made under subsection (3) are,
- (a) the individual or prescribed person who applied for the review of the determination;
  - (b) the service provider who made the determination of incapacity; and
  - (c) any other persons whom the prescribed body specifies.

### **Powers of review body**

(6) A body prescribed for the purposes of this section may confirm the determination of incapacity or may determine that the individual is capable.

### **Restriction on repeated applications**

~~(7) If a determination that an individual is incapable is confirmed on the final disposition of an application under this section, the individual shall not make a new application under this section for a determination with respect to the same or a similar issue within six months after the final disposition of the earlier application, unless the body prescribed for the purposes of this section gives leave in advance.~~

### **Grounds for leave**

~~(8) The prescribed body may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the individual's capacity.~~

### **Appointment of representative**

**298.1** (1) ~~An individual who is 16 or older and who is determined to be incapable may apply to a body prescribed for the purposes of this section for appointment of a representative to consent on the individual's behalf to a collection, use or disclosure of personal information by a service provider.~~

### **Application by proposed representative**

~~(2) If an individual is incapable, another individual who is 16 or older may apply to a body prescribed for the purposes of this section to be appointed as a representative to consent on behalf of the incapable individual to a collection, use or disclosure of personal information.~~



### **Deemed application concerning capacity**

(3) An application to a prescribed body under subsection (1) or (2) is deemed to include an application to a prescribed body under subsection 298 (3) with respect to the individual's capacity, unless the individual's capacity has been determined by a prescribed body under section 298 within the previous six months.

### **Exception**

(4) Subsections (1) and (2) do not apply if the individual to whom the personal information relates has a guardian of the person, a guardian of property, an attorney for personal care or an attorney for property, who has authority to give or refuse consent to the collection, use or disclosure.

### **Parties**

(5) The parties to the application are:

1. The individual to whom the personal information relates.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 26 (1) of the *Personal Health Information Protection Act, 2004*.
4. All other persons whom the prescribed body specifies.

### **Appointment**

(6) In an appointment under this section, the prescribed body may authorize the representative to consent, on behalf of the individual to whom the personal information relates, to,

- (a) a particular collection, use or disclosure at a particular time;
- (b) a collection, use or disclosure of the type specified by the prescribed body in circumstances specified by the prescribed body, if the individual is determined to be incapable at the time the consent is sought; or
- (c) any collection, use or disclosure at any time, if the individual is determined to be incapable at the time the consent is sought.

### **Criteria for appointment**

(7) The prescribed body may make an appointment under this section if it is satisfied that the following requirements are met:

1. The individual to whom the personal information relates does not object to the appointment.
2. The representative consents to the appointment, is at least 16 and is capable.
3. The appointment is in the best interests of the individual to whom the personal information relates.

### **Powers of prescribed body**

(8) Unless the individual to whom the personal information relates objects, the prescribed body may,

- (a) appoint as representative a different individual than the one named in the application;
- (b) limit the duration of the appointment;
- (c) impose any other condition on the appointment; or
- (d) on any person's application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment.

### **Termination**

(9) A body prescribed for the purposes of this section may, on any person's application, terminate an appointment made under this section if,

- (a) the individual to whom the personal information relates or the representative requests the termination;
- (b) the representative is no longer capable;
- (c) the appointment is no longer in the best interests of the individual to whom the personal information relates; or
- (d) the individual to whom the personal information relates has a guardian of the person, a guardian of property, an attorney for personal care or an attorney for property, who has authority to give or refuse consent to the types of collections, uses and disclosures for which the appointment was made and in the circumstances to which the appointment applies.

## **Procedure**

(10) A body prescribed for the purposes of this section shall comply with the prescribed requirements and restrictions in conducting the review.

## **INTEGRITY AND PROTECTION OF PERSONAL INFORMATION**

### **Steps to ensure accuracy, etc. of personal information**

#### **Personal information used by service provider**

**299** (1) A service provider that uses personal information for the purpose of providing a service shall take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes for which it uses the information.

#### **Personal information disclosed by service provider**

- (2) A service provider that discloses personal information that has been collected for the purpose of providing a service shall,
- (a) take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes of the disclosure that are known to the service provider at the time of the disclosure; or
  - (b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information.

#### **Record of disclosed personal information**

(3) A service provider that discloses personal information that has been collected for the purpose of providing a service shall record the disclosures made under the prescribed provisions in the prescribed manner.

### **Steps to ensure collection of personal information is authorized**

**300** A service provider shall take reasonable steps to ensure that personal information is not collected without authority.

#### **Steps to ensure security of personal information**

**301** (1) A service provider shall take reasonable steps to ensure that personal information that has been collected for the purpose of providing a service and that is in the service provider's custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal.

#### **Notice of theft, loss, etc. to individual**

- (2) Subject to any prescribed exceptions and additional requirements, if personal information that has been collected for the purpose of providing a service and that is in a service provider's custody or control is stolen or lost or if it is used or disclosed without authority, the service provider shall,
- (a) notify the individual to whom the information relates at the first reasonable opportunity of the theft, loss or unauthorized use or disclosure; and
  - (b) include in the notice a statement that the individual is entitled to make a complaint to the Commissioner under section 307.

#### **Notice to Commissioner and Minister**

(3) If the circumstances surrounding the theft, loss or unauthorized use or disclosure meet the prescribed requirements, the service provider shall notify the Commissioner and the Minister of the theft, loss or unauthorized use or disclosure.

### **Handling of records**

**302** (1) A service provider,

- ~~— (a) shall take reasonable steps to ensure that the records of personal information that has been collected for the purpose of providing a service and that are in its custody or control are retained, transferred and disposed of in a secure manner; and~~
- ~~— (a) shall take reasonable steps to ensure that the records of personal information collected for the purpose of providing a service that are in its custody or control are retained, transferred and disposed of in a secure manner; and~~
- (b) shall comply with any prescribed requirements in respect of the retention, transfer and disposal of those records.

#### **Retention of records subject to access request**

(2) Despite subsection (1), a service provider that has custody or control of personal information that is subject to a request for access under section 303 shall retain the information for as long as necessary to allow the individual to exhaust any recourse under this Act that they may have with respect to the request.

## **Disclosure to successor**

**302.1** (1) A service provider may disclose personal information about an individual to a potential successor of the service provider, for the purpose of allowing the potential successor to assess and evaluate the operations of the service provider, if the potential successor first enters into an agreement with the service provider to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purpose of the assessment or evaluation.

## **Transfer to successor**

(2) A service provider may transfer records of personal information about an individual to the service provider's successor if the service provider makes reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records.

## **Definitions**

(3) In this section,

“potential successor” and “successor” mean a potential successor or a successor that is a service provider or that will be a service provider if it becomes a successor.

## **Written public statement by service provider**

**302.2** (1) A service provider shall, in a manner that is practical in the circumstances, make available to the public a written statement in plain, easy-to-understand language that,

- (a) provides a general description of the service provider's information practices;
- (b) describes how to contact the service provider;
- (c) describes how an individual may obtain access to or request correction of a record of personal information about the individual that is in the custody or control of the service provider; and
- (d) describes how to make a complaint to the service provider and to the Commissioner under this Part.

## **Use or disclosure contrary to service provider's information practices**

(2) If a service provider uses or discloses personal information about an individual, without the individual's consent, in a manner that is outside the scope of the service provider's description of its information practices under clause (1) (a), the service provider shall,

- (a) inform the individual of the uses and disclosures at the first reasonable opportunity, unless the individual does not have a right of access under section 303 to a record of the information;
- (b) make a note of the uses and disclosures; and
- (c) keep the note as part of the record of personal information about the individual that it has in its custody or under its control or in a form that is linked to that record.

## **INDIVIDUAL'S ACCESS TO PERSONAL INFORMATION**

### **Individual's right of access**

**303** (1) An individual has a right of access to a record of personal information about the individual that is in a service provider's custody or control and that relates to the provision of a service to the individual unless,

- (a) the record or the information in the record is subject to a legal privilege that restricts its disclosure to the individual;
- (b) another Act, an Act of Canada or a court order prohibits its disclosure to the individual;
- (c) the information in the record was collected or created primarily in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, has not been concluded; or
- (d) granting the access could reasonably be expected to,
  - (i) result in a risk of serious harm to the individual or another individual,
  - (ii) lead to the identification of an individual who was required by law to provide information in the record to the service provider, or
  - (iii) lead to the identification of an individual who provided information in the record to the service provider explicitly or implicitly in confidence if the service provider considers it appropriate in the circumstances that the identity of the individual be kept confidential.

### **Right of access to part of record not restricted**

(2) Despite subsection (1), an individual has a right of access to that part of a record of personal information about the individual that can reasonably be severed from the part of the record to which the individual does not have a right of access under any of clauses (1) (a) to (d).



### **Right of access to part of record not dedicated to provision of service**

(3) Despite subsection (1), if a record is not a record dedicated primarily to the provision of a service to the individual requesting access, the individual has a right of access only to the personal information about the individual in the record that can reasonably be severed from the record.

### **Consultation regarding harm**

(4) Before deciding to refuse to grant an individual access to a record of personal information under subclause (1) (d) (i), a service provider may consult with a member of the College of Physicians and Surgeons of Ontario, a member of the College of Psychologists of Ontario or a member of the Ontario College of Social Workers and Social Service Workers.

### **Informal access**

(5) Nothing in this Part prevents a service provider from granting an individual access to a record of personal information to which the individual has a right of access, if the individual makes an oral request for access or does not make a request for access under section 304.

### **Service provider may communicate with individual**

(6) Nothing in this Part prevents a service provider from communicating with an individual or the individual's substitute decision-maker with respect to a record of personal information to which the individual has a right of access.

### **Request for access**

**304** (1) An individual may exercise a right of access to a record of personal information by making a written request for access to the service provider that has custody or control of the information.

### **Details required**

(2) The request must contain sufficient detail to enable the service provider to identify and locate the record with reasonable efforts.

### **Service provider must assist individual making request**

(3) If the request does not contain sufficient detail to enable the service provider to identify and locate the record with reasonable efforts, the service provider shall offer assistance to the person requesting access in reformulating the request to comply with subsection (2).

### **Response of service provider**

**305** (1) A service provider that receives a request from an individual for access to a record of personal information shall,

- (a) make the record available to the individual for examination and, at the request of the individual, provide a copy of the record to the individual and if reasonably practical, an explanation of the purpose and nature of the record and any term, code or abbreviation used in the record;
- (b) give a written notice to the individual stating that, after a reasonable search, the service provider has concluded that the record does not exist, cannot be found, or is not a record to which this Part applies;
- (c) if the service provider refuses the request, in whole or in part, under any provision of this Part other than clause 303 (1) (c) or (d), give a written notice to the individual stating that the service provider is refusing the request, in whole or in part, providing a reason for the refusal and stating that the individual is entitled to make a complaint about the refusal to the Commissioner under section 307; or
- (d) subject to subsection (2), if the service provider refuses the request, in whole or in part, under clause 303 (1) (c) or (d), give a written notice to the individual stating that the individual is entitled to make a complaint about the refusal to the Commissioner under section 307 and that the service provider is refusing,
  - (i) the request, in whole or in part, while citing which of clauses 303 (1) (c) and (d) apply,
  - (ii) the request, in whole or in part, under one or both of clauses 303 (1) (c) and (d), while not citing which of those provisions apply, or
  - (iii) to confirm or deny the existence of any record subject to clauses 303 (1) (c) and (d).

### **Exception**

(2) A service provider shall not act under subclause (1) (d) (i) where doing so would reasonably be expected in the circumstances known to the person making the decision on behalf of the service provider to reveal to the individual, directly or indirectly, information to which the individual does not have a right of access.

### **Time for response**

(3) As soon as possible, but no later than 30 days after receiving the request, the service provider shall, by written notice to the individual, give the response required by subsection (1) or extend the deadline for responding by not more than 90 days if,

- (a) responding to the request within 30 days would unreasonably interfere with the operations of the service provider because the information consists of numerous pieces of information or locating the information would necessitate a lengthy search; or
- (b) the time required to undertake an assessment under subsection 303 (1) necessary to respond to the request within 30 days after receiving it would make it not reasonably practical to respond within that time.

#### **Extension of time — notice and response**

- (4) A service provider that extends the time limit under subsection (3) shall,
  - (a) give the individual written notice of the extension setting out the length of the extension and the reason for it; and
  - (b) respond as required by subsection (1) as soon as possible but no later than the expiry of the time limit as extended.

#### **Expedited access**

- (5) Despite subsections (3) and (4), if the individual provides the service provider with evidence satisfactory to the service provider that the individual requires access to the requested record of personal information within a specified time period, the service provider shall respond within that time period if the service provider is reasonably able to do so.

#### **Frivolous or vexatious requests**

- (6) A service provider that believes on reasonable grounds that a request for access to a record of personal information is frivolous or vexatious or is made in bad faith may refuse to grant the individual access to the requested record and, in that case, shall provide the individual with a notice that sets out the reasons for the refusal and that states that the individual is entitled to make a complaint about the refusal to the Commissioner under section 307.

#### **Deemed refusal**

- (7) A service provider that does not respond to a request for access within the time required is deemed to have refused the request.

#### **Right to complain**

- (8) If the service provider refuses or is deemed to have refused the request, in whole or in part,
  - (a) the individual is entitled to make a complaint about the refusal to the Commissioner under section 307; and
  - (b) in the complaint, the burden of proof in respect of the refusal lies on the service provider.

#### **Identity of individual**

- (9) A service provider shall not make a record of personal information or a part of it available to an individual or provide a copy of it to an individual under clause (1) (a) without first taking reasonable steps to be satisfied as to the individual's identity.

#### **No fee for access**

- (10) A service provider shall not charge a fee for providing access to a record under this section, except in the prescribed circumstances.

### **CORRECTIONS TO RECORDS**

#### **Correction to record**

##### **Interpretation**

- 306** (1) In this section, a reference to a correction to a record or to correct a record includes the addition of, or adding, information to make the record complete.

##### **Written request**

- (2) If a service provider has granted an individual access to a record of personal information and if the individual believes that the record is inaccurate or incomplete, the individual may request in writing that the service provider correct the record.

##### **Informal request**

- (3) If the individual makes an oral request that the service provider correct the record, nothing in this section prevents the service provider from making the requested correction.

##### **Time for response**

- (4) As soon as possible, but no later than 30 days after receiving a request for a correction under subsection (2), the service provider shall, by written notice to the individual, grant or refuse the individual's request or extend the deadline for responding by not more than 90 days if,
  - (a) responding to the request within 30 days would unreasonably interfere with the operations of the service provider; or

- (b) the time required to undertake the consultations necessary to respond to the request within 30 days would make it not reasonably practical to respond within that time.

### **Extension of time**

- (5) A service provider that extends the time limit under subsection (4) shall by written notice to the individual,
- (a) set out the length of the extension and the reason for it; and
  - (b) grant or refuse the individual's request as soon as possible in the circumstances but no later than the expiry of the time limit as extended.

### **Frivolous or vexatious requests**

- (6) A service provider that believes on reasonable grounds that a request for a correction is frivolous or vexatious or is made in bad faith may refuse to grant the request and, in that case, shall provide the individual with a notice that sets out the reasons for the refusal and that states that the individual is entitled to make a complaint about the refusal to the Commissioner under section 307.

### **Deemed refusal**

- (7) A service provider that does not respond to a request for a correction within the time required is deemed to have refused the request.

### **Right to complain**

- (8) If the service provider refuses or is deemed to have refused the request, in whole or in part,
- (a) the individual is entitled to make a complaint about the refusal to the Commissioner under section 307; and
  - (b) in the complaint, the burden of proof in respect of the refusal lies on the service provider.

### **Duty to correct**

- (9) The service provider shall grant a request for a correction if the individual demonstrates, to the service provider's satisfaction, that the record is inaccurate or incomplete and gives the service provider the information necessary to enable the service provider to correct the record.

### **Exceptions**

- (10) Despite subsection (9), a service provider is not required to correct a record of personal information if,
- (a) it consists of a record that was not originally created by the service provider and the service provider does not have sufficient knowledge, expertise or authority to correct the record; or
  - (b) it consists of a professional opinion or observation that was made in good faith about the individual.

### **Manner of making the correction**

- (11) Upon granting a request for a correction, the service provider shall,
- (a) make the requested correction,
    - (i) by recording the correct information in the record or, if that is not possible, by ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect or incomplete and to direct the person to the correct information, and
    - (ii) by striking out the incorrect information in a manner that does not obliterate the record or, if that is not possible, by labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that enables a person to trace the incorrect information;
  - (b) give notice to the individual of what has been done under clause (a); and
  - (c) at the request of the individual, give written notice of the requested correction, to the extent reasonably possible, to the persons to whom the service provider has disclosed the information with respect to which the individual requested the correction of the record, unless the correction cannot reasonably be expected to have an effect on the ongoing provision of services.

### **Notice of refusal**

- (12) A notice of refusal under subsection (4) or (5) must give the reasons for the refusal and inform the individual that the individual is entitled to,
- (a) prepare a concise statement of disagreement that sets out the correction that the service provider has refused to make;
  - (b) require that the service provider attach the statement of disagreement as part of the records that it holds of the individual's personal information and disclose the statement of disagreement whenever the service provider discloses information to which the statement relates;



- (c) require that the service provider make all reasonable efforts to disclose the statement of disagreement to any person who would have been notified under clause (11) (c) if the service provider had granted the requested correction; and
- (d) make a complaint about the refusal to the Commissioner under section 307.

### **Rights of individual**

(13) If a service provider refuses a request for a correction, in whole or in part, or is deemed to have refused the request, the individual is entitled to take any of the actions described in subsection (12).

### **Service provider's duty**

(14) If the individual takes an action described in clause (12) (b) or (c), the service provider shall comply with the requirements described in the applicable clause.

### **No fee for correction**

(15) A service provider shall not charge a fee for correcting a record under this section, or for complying with subsection (14).

## **COMPLAINTS, REVIEWS AND INSPECTIONS**

### **Complaint to Commissioner**

**307** (1) A person who has reasonable grounds to believe that another person has contravened or is about to contravene a provision of this Part or the regulations made for the purposes of this Part may make a complaint to the Commissioner.

### **Time for complaint**

(2) A complaint made under subsection (1) must be in writing and must be filed within,

- (a) one year after the subject-matter of the complaint first came to the attention of the complainant or should reasonably have come to the attention of the complainant, whichever is the shorter; or
- (b) whatever longer period of time that the Commissioner permits if the Commissioner is satisfied that it does not result in prejudice to any person.

### **Same, refusal of request**

(3) A complaint that an individual makes under clause 305 (1) (c) or (d), subsection 305 (8), 306 (6) or (8) or clause 306 (12) (d) must be in writing and must be filed within six months after the service provider refused or is deemed to have refused the individual's request.

### **Application of *Personal Health Information Protection Act, 2004***

(4) Sections 57 to 69 of the *Personal Health Information Protection Act, 2004* and the regulations made under clauses 73 (1) (a), (m), (n.1) and (p) of that Act apply with necessary modifications to a complaint made under this section:

### **Same**

(5) Without limiting the generality of subsection (4), the following modifications shall be made to sections 57 to 69 of the *Personal Health Information Protection Act, 2004* and to the regulations made under clauses 73 (1) (a), (m), (n.1) and (p) of that Act as they apply to a complaint made under this section:

- 1. "Personal health information" shall be read as "personal information".
- 2. "Health information custodian" shall be read as "service provider".
- 3. "Health care" shall be read as "service".
- 4. "Information practice" or "information practices" shall be read as "a policy" or "policies" "respecting the collection, use, modification, disclosure, retention or disposal of personal information and the administrative, technical and physical safeguards and practices that the service provider maintains with respect to the information".
- 5. "This Act" shall be read as "this Part".
- 6. Clause 61 (1) (f) shall be read as follows:
  - (f) make an order directing any service provider whose activities the Commissioner reviewed to change, cease or not implement any policy respecting the collection, use, modification, disclosure, retention or disposal of personal information specified by the Commissioner, if the Commissioner determines that the policy contravenes this Act or the regulations;
- 7. Clause 61 (1) (h) shall be read so as to authorize an order in respect of a person who is an agent or employee of a service provider.
- 8. Subsection 68 (4) shall be read without clause (a).
- 9. Clause 68 (4) (b) shall be read with the following words added at the end: "unless the disclosure is necessary to comply with section 122 (duty to report child in need of protection)".

### **Response of Commissioner**

307.1 (1) Upon receiving a complaint made under this Part, the Commissioner may inform the person about whom the complaint is made of the nature of the complaint and,

- (a) inquire as to what means, other than the complaint, that the complainant is using or has used to resolve the subject-matter of the complaint;
- (b) require the complainant to try to effect a settlement, within the time period that the Commissioner specifies, with the person about which the complaint is made; or
- (c) authorize a mediator to review the complaint and to try to effect a settlement, within the time period that the Commissioner specifies, between the complainant and the person about which the complaint is made.

### **Dealings without prejudice**

(2) If the Commissioner takes an action described in clause (1) (b) or (c) but no settlement is effected within the time period specified,

- (a) none of the dealings between the parties to the attempted settlement shall prejudice the rights and duties of the parties under this Part;
- (b) none of the information disclosed in the course of trying to effect a settlement shall prejudice the rights and duties of the parties under this Part; and
- (c) none of the information disclosed in the course of trying to effect a settlement and that is subject to mediation privilege shall be used or disclosed outside the attempted settlement, including in a review of a complaint under this section or in an inspection under section 307.4, unless all parties expressly consent.

### **Commissioner's review**

(3) If the Commissioner does not take an action described in clause (1) (b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Part if satisfied that there are reasonable grounds to do so.

### **No review**

(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

- (a) the person about which the complaint is made has responded adequately to the complaint;
- (b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Part;
- (c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;
- (d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or
- (e) the complaint is frivolous or vexatious or is made in bad faith.

### **Notice**

(5) Upon deciding not to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the complainant and shall specify in the notice the reason for the decision.

### **Same**

(6) Upon deciding to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the person about whom the complaint is made.

### **Commissioner's self-initiated review**

307.2 (1) The Commissioner may, on the Commissioner's own initiative, conduct a review of any matter if the Commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this Part or the regulations and that the subject-matter of the review relates to the contravention.

### **Notice**

(2) Upon deciding to conduct a review under this section, the Commissioner shall give notice of the decision to every person whose activities are being reviewed.

### **Conduct of Commissioner's review**

307.3 (1) In conducting a review under section 307.1 or 307.2, the Commissioner may make the rules of procedure that the Commissioner considers necessary and the *Statutory Powers Procedure Act* does not apply to the review.

## **Evidence**

(2) In conducting a review under section 307.1 or 307.2, the Commissioner may receive and accept any evidence and other information that the Commissioner sees fit, whether on oath or by affidavit or otherwise and whether or not it is or would be admissible in a court of law.

## **Inspection powers**

**307.4** (1) In conducting a review under section 307.1 or 307.2, the Commissioner may, without a warrant or court order, enter and inspect any premises in accordance with this section if,

(a) the Commissioner has reasonable grounds to believe that,

(i) the person about whom the complaint was made or the person whose activities are being reviewed is using the premises for a purpose related to the subject-matter of the complaint or the review, as the case may be, and

(ii) the premises contains books, records or other documents relevant to the subject-matter of the complaint or the review, as the case may be; and

(b) the Commissioner is conducting the inspection for the purpose of determining whether the person has contravened or is about to contravene a provision of this Part or the regulations.

## **Review powers**

(2) In conducting a review under section 307.1 or 307.2, the Commissioner may,

(a) demand the production of any books, records or other documents relevant to the subject-matter of the review or copies of extracts from the books, records or other documents;

(b) inquire into all information, records, information practices of a service provider and other matters that are relevant to the subject-matter of the review;

(c) demand the production for inspection of anything described in clause (b);

(d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any books, records or other documents relevant to the subject-matter of the review; or

(e) on the premises that the Commissioner has entered, review or copy any books, records or documents that a person produces to the Commissioner, if the Commissioner pays the reasonable cost recovery fee that the service provider or person being reviewed may charge.

## **Entry to dwellings**

(3) The Commissioner shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued under subsection (4).

## **Search warrants**

(4) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary to enter a place that is being used as a dwelling to investigate a complaint that is the subject of a review under section 307.1 or 307.2, the justice of the peace may issue a warrant authorizing the entry by a person named in the warrant.

## **Time and manner for entry**

(5) The Commissioner shall exercise the power to enter premises under this section only during reasonable hours for the premises and only in such a manner so as not to interfere with services that are being provided to any person on the premises at the time of entry.

## **No obstruction**

(6) No person shall obstruct the Commissioner who is exercising powers under this section or provide the Commissioner with false or misleading information.

## **Written demand**

(7) A demand for books, records or documents or copies of extracts from them under subsection (2) must be in writing and must include a statement of the nature of the things that are required to be produced.

## **Obligation to assist**

(8) If the Commissioner makes a demand for any thing under subsection (2), the person having custody of the thing shall produce it to the Commissioner and, at the request of the Commissioner, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document.



**Removal of documents**

(9) If a person produces books, records and other documents to the Commissioner, other than those needed for the current provision of services to any person, the Commissioner may, on issuing a written receipt, remove them and may review or copy any of them if the Commissioner is not able to review and copy them on the premises that the Commissioner has entered.

**Return of documents**

(10) The Commissioner shall carry out any reviewing or copying of documents with reasonable dispatch, and shall promptly after the reviewing or copying return the documents to the person who produced them.

**Admissibility of copies**

(11) A copy certified by the Commissioner as a copy is admissible in evidence to the same extent, and has the same evidentiary value, as the thing copied.

**Answers under oath**

(12) In conducting a review under section 307.1 or 307.2, the Commissioner may, by summons, in the same manner and to the same extent as a superior court of record, require the appearance of any person before the Commissioner and compel them to give oral or written evidence on oath or affirmation.

**Inspection of record without consent**

(13) Despite subsections (2) and (12), the Commissioner shall not inspect a record of, require evidence of, or inquire into, personal information without the consent of the individual to whom it relates, unless,

- (a) the Commissioner first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the Commissioner specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual's consent in the circumstances; and
- (b) the Commissioner provides a statement to the person who has custody or control of the record to be inspected, or the evidence or information to be inquired into, setting out the Commissioner's determination under clause (a) together with brief written reasons and any restrictions and conditions that the Commissioner has specified.

**Limitation on delegation**

(14) Despite subsection 307.11 (1), the power to make a determination under clause (13) (a) and to approve the brief written reasons under clause (13) (b) may not be delegated except to an Assistant Commissioner.

**Document privileged**

(15) A document or thing produced by a person in the course of a review is privileged in the same manner as if the review were a proceeding in a court.

**Protection**

(16) Except on the trial of a person for perjury in respect of the person's sworn testimony, no statement made or answer given by that or any other person in the course of a review by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

**Protection under federal Act**

(17) The Commissioner shall inform a person giving a statement or answer in the course of a review by the Commissioner of the person's right to object to answer any question under section 5 of the *Canada Evidence Act*.

**Representations**

(18) The Commissioner shall give the person who made the complaint, the person about whom the complaint is made and any other affected person an opportunity to make representations to the Commissioner.

**Representative**

(19) A person who is given an opportunity to make representations to the Commissioner may be represented by a lawyer or another person.

**Access to representations**

(20) The Commissioner may permit a person to be present during the representations that another person makes to the Commissioner or to have access to them unless doing so would reveal,

- (a) the substance of a record of personal information, for which a service provider claims to be entitled to refuse a request for access made under section 304; or
- (b) personal information to which an individual is not entitled to request access under section 304.

### **Proof of appointment**

(21) If the Commissioner or an Assistant Commissioner has delegated their powers under this section to an officer or employee of the Commissioner, the officer or employee who exercises the powers shall, upon request, produce the certificate of delegation signed by the Commissioner or Assistant Commissioner, as the case may be.

### **Powers of Commissioner**

**307.5** (1) After conducting a review under section 307.1 or 307.2, the Commissioner may,

- (a) if the review relates to a complaint into a request by an individual under subsection 304 (1) for access to a record of personal information, make an order directing the service provider about whom the complaint was made to grant the individual access to the requested record;
- (b) if the review relates to a complaint into a request by an individual under subsection 306 (2) for correction of a record of personal information, make an order directing the service provider about whom a complaint was made to make the requested correction;
- (c) make an order directing any person whose activities the Commissioner reviewed to perform a duty imposed by this Part or the regulations;
- (d) make an order directing any person whose activities the Commissioner reviewed to cease collecting, using or disclosing personal information if the Commissioner determines that the person is collecting, using or disclosing the information, as the case may be, or is about to do so in contravention of this Part or the regulations or an agreement entered into under this Part;
- (e) make an order directing any person whose activities the Commissioner reviewed to dispose of records of personal information that the Commissioner determines the person collected, used or disclosed in contravention of this Part or the regulations or an agreement entered into under this Part but only if the disposal of the records is not reasonably expected to adversely affect the provision of services to an individual;
- (f) make an order directing any service provider whose activities the Commissioner reviewed to change, cease or not implement any information practices specified by the Commissioner, if the Commissioner determines that the information practices contravene this Part or the regulations;
- (g) make an order directing any service provider whose activities the Commissioner reviewed to implement information practices specified by the Commissioner, if the Commissioner determines that the information practices are reasonably necessary in order to achieve compliance with this Part and the regulations;
- (h) make an order directing any person who is an agent or employee of a service provider, whose activities the Commissioner reviewed and that an order made under any of clauses (a) to (g) directs to take any action or to refrain from taking any action, to take the action or to refrain from taking the action if the Commissioner considers that it is necessary to make the order against the agent or employee to ensure that the service provider will comply with the order made against the service provider; or
- (i) make comments and recommendations on the privacy implications of any matter that is the subject of the review.

### **Terms of order**

(2) An order that the Commissioner makes under subsection (1) may contain the terms that the Commissioner considers appropriate.

### **Copy of order, etc.**

(3) Upon making comments, recommendations or an order under subsection (1), the Commissioner shall provide a copy of them, including reasons for any order made, to,

- (a) the complainant and the person about whom the complaint was made, if the Commissioner made the comments, recommendations or order after conducting a review under section 307.1 of a complaint;
- (b) the person whose activities the Commissioner reviewed, if the Commissioner made the comments, recommendations or order after conducting a review under section 307.2;
- (c) all other persons to whom the order is directed;
- (d) the body or bodies that are legally entitled to regulate or review the activities of a service provider directed in the order or to whom the comments or recommendations relate; and
- (e) any other person whom the Commissioner considers appropriate.

### **No order**

(4) If, after conducting a review under section 307.1 or 307.2, the Commissioner does not make an order under subsection (1), the Commissioner shall give the complainant, if any, and the person whose activities the Commissioner reviewed a notice that sets out the Commissioner's reasons for not making an order.



**Appeal of order**

**307.6** (1) A person affected by an order of the Commissioner made under any of clauses 307.5 (1) (c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order.

**Certificate of Commissioner**

(2) In an appeal under this section, the Commissioner shall certify to the Divisional Court,

- (a) the order and a statement of the Commissioner's reasons for making the order;
- (b) the record of all hearings that the Commissioner has held in conducting the review on which the order is based;
- (c) all written representations that the Commissioner received before making the order; and
- (d) all other material that the Commissioner considers is relevant to the appeal.

**Confidentiality of information**

(3) In an appeal under this section, the court may take precautions to avoid the disclosure by the court or any person of any personal information about an individual, including, where appropriate, receiving representations without notice, conducting hearings in private or sealing the court files.

**Court order**

(4) On hearing an appeal under this section, the court may, by order,

- (a) direct the Commissioner to make the decisions and to do the acts that the Commissioner is authorized to do under this Part and that the court considers proper; and
- (b) if necessary, vary or set aside the Commissioner's order.

**Compliance by Commissioner**

(5) The Commissioner shall comply with the court's order.

**Enforcement of order**

**307.7** An order made by the Commissioner under this Part that has become final as a result of there being no further right of appeal may be filed with the Superior Court of Justice and on filing becomes and is enforceable as a judgment or order of the Superior Court of Justice to the same effect.

**Further order of Commissioner**

**307.8** (1) After conducting a review under section 307.1 or 307.2 and making an order under subsection 307.5 (1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review.

**Circumstances**

(2) The Commissioner may exercise the powers described in subsection (1) even if the order that the Commissioner rescinds or varies has been filed with the Superior Court of Justice under section 307.7.

**Copy of order, etc.**

(3) Upon making a further order under subsection (1), the Commissioner shall provide a copy of it to the persons described in clauses 307.5 (3) (a) to (e) and shall include with the copy a notice setting out,

- (a) the Commissioner's reasons for making the order; and
- (b) if the order was made under any of clauses 307.5 (1) (c) to (h), a statement that the persons affected by the order have the right to appeal described in subsection (4).

**Appeal**

(4) A person affected by an order that the Commissioner rescinds, varies or makes under any of clauses 307.5 (1) (c) to (h) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 307.6 (2) to (5) apply to the appeal.

**Damages for breach of privacy**

**307.9** (1) If the Commissioner has made an order under this Part that has become final as the result of there being no further right of appeal, a person affected by the order may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of a contravention of this Part or the regulations.



**Same**

(2) If a person has been convicted of an offence under this Part and the conviction has become final as a result of there being no further right of appeal, a person affected by the conduct that gave rise to the offence may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of the conduct.

**Damages for mental anguish**

(3) If, in a proceeding described in subsection (1) or (2), the Superior Court of Justice determines that the harm suffered by the plaintiff was caused by a contravention or offence, as the case may be, that the defendants engaged in wilfully or recklessly, the court may include in its award of damages an award for mental anguish.

**General powers of Commissioner**

**307.10** The Commissioner may,

- (a) engage in or commission research into matters affecting the carrying out of the purposes of this Part;
- (b) conduct public education programs and provide information concerning this Part and the Commissioner's role and activities;
- (c) receive representations from the public concerning the operation of this Part;
- (d) on the request of a service provider, offer comments on the service provider's actual or proposed information practices;
- (e) assist in investigations and similar procedures conducted by a person who performs similar functions to the Commissioner under the laws of Canada, except that in providing assistance, the Commissioner shall not use or disclose information collected by or for the Commissioner under this Part; and
- (f) in appropriate circumstances, authorize the collection of personal information about an individual in a manner other than directly from the individual.

**Delegation by Commissioner**

**307.11** (1) The Commissioner may in writing delegate any of the Commissioner's powers, duties or functions under this Part, including the power to make orders, to an Assistant Commissioner or to an officer or employee of the Commissioner.

**Subdelegation by Assistant Commissioner**

(2) An Assistant Commissioner may in writing delegate any of the powers, duties or functions delegated to the Assistant Commissioner under subsection (1) to any other officers or employees of the Commissioner, subject to the conditions and restrictions that the Assistant Commissioner specifies in the delegation.

**Limitations re personal information**

**307.12** (1) The Commissioner and any person acting under the Commissioner's authority may collect, use or retain personal information in the course of carrying out any functions under this Part solely if no other information will serve the purpose of the collection, use or retention of the personal information and in no other circumstances.

**Extent of information**

(2) The Commissioner and any person acting under the Commissioner's authority shall not in the course of carrying out any functions under this Part collect, use or retain more personal information than is reasonably necessary to enable the Commissioner to perform the Commissioner's functions relating to this Part or for a proceeding under it.

**Confidentiality**

(3) The Commissioner and any person acting under the Commissioner's authority shall not disclose any information that comes to their knowledge in the course of exercising their functions under this Part unless,

- (a) the disclosure is required for the purpose of exercising those functions;
- (b) the information relates to a service provider, the disclosure is made to a body that is legally entitled to regulate or review the activities of the service provider and the Commissioner or an Assistant Commissioner is of the opinion that the disclosure is justified;
- (c) the Commissioner obtained the information under subsection 307.4 (12) and the disclosure is required in a prosecution for an offence under section 131 of the *Criminal Code* (Canada) in respect of sworn testimony; or
- (d) the disclosure is made to the Attorney General, the information relates to the commission of an offence against an Act or an Act of Canada and the Commissioner is of the view that there is evidence of such an offence.

**Same**

(4) Despite anything in subsection (3), the Commissioner and any person acting under the Commissioner's authority shall not disclose the identity of a person, other than a complainant under subsection 307 (1), who has provided information to the

Commissioner and who has requested the Commissioner to keep the person's identity confidential, unless the disclosure is necessary to comply with section 122 (duty to report child in need of protection).

### **Information in review or proceeding**

(5) The Commissioner in a review under section 307.1 or 307.2 and a court, tribunal or other person, including the Commissioner, in a proceeding mentioned in section 307.9 or this section shall take every reasonable precaution, including, when appropriate, receiving representations without notice and conducting hearings that are closed to the public, to avoid the disclosure of any information for which a service provider is entitled to refuse a request for access made under section 304.

### **Not compellable witness**

(6) The Commissioner and any person acting under the Commissioner's authority shall not be required to give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise of their functions under this Part that they are prohibited from disclosing under subsection (3) or (4).

### **Immunity**

307.13 No action or other proceeding for damages may be instituted against the Commissioner or any person acting under the Commissioner's authority for,

- (a) anything done, reported or said in good faith and in the exercise or intended exercise of any of their powers or duties under this Part; or
- (b) any alleged neglect or default in the exercise in good faith of any of their powers or duties under this Part.

## **PROHIBITIONS, IMMUNITY AND OFFENCES**

### **Non-retaliation**

**308** No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that,

- (a) the person, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that any other person has contravened or is about to contravene a provision of ~~this Act~~ this Part or the regulations;
- (b) the person, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene a provision of ~~this Act~~ this Part or the regulations;
- (c) the person, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of a provision of ~~this Act~~ this Part or the regulations; or
- (d) any person believes that the person will do anything described in clause (a), (b) or (c).

### **Immunity**

**309** (1) No action or other proceeding for damages may be instituted against a service provider or any other person for,

- (a) anything done, reported or said, in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of their powers or duties under this Part; or
- (b) any alleged neglect or default that was reasonable in the circumstances in the exercise in good faith of any of their powers or duties under this Part.

### **Crown liability**

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) of this section does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

### **Substitute decision-maker**

(3) A person who, on behalf of or in the place of an individual, gives, withholds or withdraws consent to a collection, use or disclosure of personal information about the individual, or makes a request, gives an instruction or takes a step is not liable for damages for doing so if the person acts reasonably in the circumstances, in good faith and in accordance with ~~this Act~~ this Part and the regulations.

### **Reliance on assertion**

(4) Unless it is not reasonable to do so in the circumstances, a person is entitled to rely on the accuracy of an assertion made by another person, in connection with a collection, use or disclosure of, or access to, the information under ~~this Act~~ this Part, to the effect that the other person,

- (a) is a person who is authorized to request access to a record of personal information under subsection 304 (1); or
- (b) is a person who is authorized under subsection 296 (1), (2) or (4) to consent to the collection, use or disclosure of personal information about another individual.

## Offences

**310 (1)** A person is guilty of an offence if the person,

- (a) wilfully collects, uses or discloses personal information in contravention of this Part or the regulations made for the purposes of this Part;
- (b) makes a request under this Act, under false pretences, for access to or correction of a record of personal information;
- (c) in connection with the collection, use or disclosure of personal information or access to a record of personal information, makes an assertion, knowing that it is untrue, to the effect that the person,
  - (i) is a person who is authorized to consent to the collection, use or disclosure of personal information about another individual, or
  - (ii) is a person entitled to access to a record of personal information under section 303;
- (d) disposes of a record of personal information in the custody or under the control of a service provider with an intent to evade a request for access to the record that the service provider has received under subsection 304 (1);
- (e) wilfully disposes of a record of personal information in contravention of section 302;
- (f) wilfully fails to comply with clause 301 (2) (a);
- (g) wilfully obstructs the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of their functions in relation to this Part;
- (h) wilfully makes a false statement to mislead or attempt to mislead the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of their functions in relation to this Part;
- (i) wilfully fails to comply with an order made by the Commissioner or a person known to be acting under the authority of the Commissioner in relation to this Part; or
- (j) contravenes section 308.

## Penalty

(2) A person who is guilty of an offence under subsection (1) is liable, on conviction, to a fine of not more than \$5,000.

## Officers, etc.

(3) If a corporation commits an offence under this Part, every officer, member, employee or agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted.

## No prosecution

(4) No person is liable to prosecution for an offence under this or any other Act by reason of complying with a requirement of the Commissioner in relation to this Part.

## Consent of Attorney General

(5) A prosecution for an offence under subsection (1) shall not be commenced without the consent of the Attorney General.

## Presiding judge

(6) The Crown may, by notice to the clerk of the Ontario Court of Justice, require that a provincial judge preside over a proceeding in respect of an offence under subsection (1).

## Protection of information

(7) In a prosecution for an offence under subsection (1) or where documents or materials are filed with a court under sections 158 to 160 of the *Provincial Offences Act* in relation to an investigation into an offence under this Part, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal information, including, where appropriate,

- (a) removing the identifying information of any person whose personal information is referred to in any documents or materials;
- (b) receiving representations without notice;
- (c) conducting hearings or parts of hearings in private; or
- (d) sealing all or part of the court files.

## No limitation

(8) Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this Part.



## PART XI MISCELLANEOUS MATTERS

### Child and Family Services Review Board

**311** (1) The Child and Family Services Review Board is continued under the name Child and Family Services Review Board in English and Commission de révision des services à l'enfance et à la famille in French.

#### Composition and duties

(2) The Board is composed of the prescribed number of members appointed by the Lieutenant Governor in Council and has the powers and duties given to it by this Act and the regulations.

#### Chair and vice-chairs

(3) The Lieutenant Governor in Council may appoint a member of the Board as chair and may appoint one or more other members as vice-chairs.

#### Quorum

(4) The prescribed number of members of the Board are a quorum.

#### Remuneration

(5) The chair and vice-chairs and the other members of the Board shall be paid the remuneration determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

#### Police record checks

**312** The Lieutenant Governor in Council may, by regulation, require the following persons to provide a police record check concerning the person to any other person or body in accordance with the regulations:

1. A person who provides or receives services under this Act.
2. A person residing, employed or volunteering in premises where services are provided or received under this Act.
3. Such other persons who may be prescribed.

#### ~~Society may request police record checks from police, etc.~~

~~**313** A society may ask the Ontario Provincial Police, a municipal police force or a prescribed entity for police record checks or other prescribed information for the purposes of performing the society's functions under subsection 34 (1).~~

#### Society may request police record checks from police, etc.

**313** A society may, in prescribed circumstances or for a prescribed purpose, ask the Ontario Provincial Police, a municipal police force or a prescribed entity for police record checks or other prescribed information.

#### Review of Act

**314** (1) The Minister shall periodically conduct a review of this Act or those provisions of it specified by the Minister.

#### Beginning of review

(2) The Minister shall inform the public when a review under this section begins and what provisions of this Act are included in the review.

#### Consultation with children and young persons

(2.1) The Minister shall consult with children and young persons when conducting a review under this section.

#### Written report

(3) The Minister shall prepare a written report respecting a written report, in plain language, respecting the review, including the matters described in sections 314.1 and 315, and shall make that report available to the public.

#### Period for review

(4) The first review shall be completed and the report made available to the public within five years after the day this section comes into force.

#### Subsequent reviews

(5) Each subsequent review shall be completed and the report made available to the public within five years after the day the report on the previous review has been made available to the public.

#### Review to address rights of children and young persons

**314.1** Every review of this Act shall address the rights of children and young persons in Part II.

## **Review re: First Nations, Inuit and Métis issues**

**315** Every review of this Act shall include,

- ~~— (a) a review of the additional purpose of the Act described in paragraph 6 of subsection 1 (2), with a view to evaluating the progress that has been made in working with First Nations, Inuit and Métis peoples to achieve that purpose; and~~
- ~~— (b) a review of provisions imposing obligations on societies when providing services to a First Nations, Inuit or Métis person or in respect of First Nations, Inuit or Métis children, with a view to ensuring compliance by societies with those provisions.~~

## **Review to address First Nations, Inuit and Métis issues**

**315** Every review of this Act shall address the following matters:

- 1. The additional purpose of the Act described in paragraph 6 of subsection 1 (2), with a view to evaluating the progress that has been made in working with First Nations, Inuit and Métis peoples to achieve that purpose.
- 2. The provisions imposing obligations on societies when providing services to a First Nations, Inuit or Métis person or in respect of First Nations, Inuit or Métis children, with a view to ensuring compliance by societies with those provisions.

## **PART XII REGULATIONS**

### **General**

#### **Lieutenant Governor in Council regulations**

**316** (1) The Lieutenant Governor in Council may make regulations for the purposes of this Act,

- 1. prescribing and governing a dispute resolution mechanism, in accordance with Jordan's Principle, to resolve inter-jurisdictional and intra-jurisdictional disputes in respect of services provided under this Act;
- 2. prescribing additional services that are services under this Act;
- 3. prescribing additional powers and duties of Directors and program supervisors;
- 4. prescribing additional persons and entities who are service providers;
- 4.1 governing the use of physical restraint under this Act, including prescribing standards and procedures for its use, requiring service providers to develop policies governing its use and prescribing provisions that must be or may not be included in those policies;
- 5. governing the use of mechanical restraints under this Act, including prescribing standards and procedures for their use;
- 6. prescribing and governing an internal procedure by which complaints, other than complaints under section 17 or 116, may be made to service providers, and prescribing and governing an external review by a specified entity of specified classes of such complaints;
- 7. exempting a service provider, lead agency or service, or any class of them, from any provision or requirement of this Act or the regulations for a specified period or periods;
- 8. defining any word or expression used in this Act that is not already defined in this Act and further defining any word or expression used in this Act that is already defined in this Act;
- 9. prescribing or otherwise providing for anything required or permitted by this Act to be prescribed or otherwise provided for in the regulations, including governing anything required or permitted to be done in accordance with the regulations, which is not already provided for in this Part, except as otherwise provided in paragraph 1 of subsection 324 (2);
- 10. governing transitional matters that may arise due to the enactment of this Act or the repeal of the old Act.

### **Conflicts**

(2) If there is a conflict between a regulation made under paragraph 10 of subsection (1) and any provision of this Act or the regulations, the regulation made under paragraph 10 of subsection (1) prevails.

#### **Minister's regulations**

(3) The Minister may make regulations for the purposes of this Act,

- 0.1 prescribing performance standards and performance measures for the provision of services to children in care, including prescribing a process for determining what the performance standards and performance measures should be, and implementing the performance standards and performance measures that are prescribed;

1. governing the determination of the bands and First Nations, Inuit or Métis communities with which a First Nations, Inuit or Métis child identifies;
2. governing how service providers, in making decisions in respect of any child, are to take into account the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression in order to give effect to the purpose set out in subparagraph 3 iii of subsection 1 (2);
3. governing how service providers, in making decisions in respect of any child, are to take into account the child's cultural and linguistic needs in order to give effect to the purpose set out in subparagraph 3 iv of subsection 1 (2);
4. governing how service providers, in making decisions in respect of any child, are to take into account regional differences in order to give effect to the purpose set out in paragraph 4 of subsection 1 (2);
5. governing how service providers, in the case of a First Nations, Inuit or Métis child, are to take into account the child's cultures, heritages, traditions, connection to community and the concept of the extended family, in order to give effect to the purpose set out in paragraph 6 of subsection 1 (2);
6. prescribing persons who may represent children and their parents in order to assist service providers in taking into account all the characteristics and needs of a child, and all the other factors referred to in subparagraphs 3 iii and iv and paragraphs 4 and 6 of subsection 1 (2) for the purposes set out in those subparagraphs and paragraphs, and respecting how such persons shall be selected or appointed and governing their roles and duties as representatives;
7. prescribing procedures and conditions of eligibility for the admission of children and other persons to and their discharge from places where services are provided;
8. governing the residential placement of children and prescribing procedures for placements, discharge, assessments and case management;
9. requiring that residential placements with or by service providers be made in accordance with written agreements, and prescribing their form and contents;
10. prescribing the qualifications, powers and duties of persons employed in providing services;
11. prescribing classes of persons employed or to be employed in providing services who must undertake training, prescribing that training and prescribing the circumstances under which that training must be undertaken;
12. requiring and prescribing medical and other related or ancillary services for the care and treatment of children and other persons in places where services are provided;
13. permitting notices, orders or other documents that are required under this Act to be provided in writing to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified;
14. governing how notices, orders and other documents or things are to be given or served under this Act, including providing rules for when they are deemed to be received;
15. prescribing forms and providing for their use;
16. modifying any provision or requirement of this Act or the regulations to accommodate persons with disabilities within the meaning of the *Accessibility for Ontarians with Disabilities Act, 2005*.

#### **Regulations: Part II (Children's and Young Persons' Rights)**

**317** The Lieutenant Governor in Council may make regulations for the purposes of Part II,

1. governing how the rights of children and young persons in this Act are to be respected and promoted by service providers;
- 1.1 prescribing intervals for the purpose of section 8;
2. governing internal complaints procedures to be established under section 17;
  3. establishing procedures for reviews under section 18;
  4. prescribing an alternative dispute resolution method for the purpose of subsection 16 (1) and an alternative dispute resolution process other than the one established by the bands and communities referred to in subsection 16 (2) for the purpose of that subsection.

#### **Regulations: Part III (Funding and Accountability)**

##### **Minister's regulations**

**318** (1) The Minister may make regulations for the purposes of Part III,

1. prescribing entities to whom funding may be provided for the purposes of clause 24 (c);
2. prescribing other purposes for which funding may be provided under clause 24 (c);



- 2.1 prescribing the information to be contained in or excluded from a summary of an order made available to the public under clause 32 (4) (b) or 42 (4) (b);
3. prescribing standards of services and procedures and practices to be followed by societies for the purposes of subsection 34 (2);
4. governing the management and operation of societies;
5. prescribing a system for determining the amounts of payments under subsection 39 (1);
6. prescribing terms that shall or may be included in accountability agreements for the purposes of subsection 40 (4);
7. governing the provision of services;
8. governing the accommodation, facilities and equipment to be provided,
  - i. in buildings in which services are provided, and
  - ii. in the course of the provision of services;
9. governing the establishment, management, operation, location, construction, alteration and renovation of buildings in which services are provided;
10. prescribing the accounts and records to be kept by societies, the claims, returns and reports to be made and budgets to be submitted to the Minister and the methods, time and manner in which they shall be made or submitted;
11. requiring service providers to keep records, and prescribing the form and content of those records;
12. providing for the recovery, by an agency or by the Minister, from the person or persons in whose charge a child is or has been or from the estate of that person or persons of amounts paid by the agency for the child's care and maintenance, and prescribing the circumstances and the manner in which such a recovery may be made;
13. providing for the recovery of payments made to societies under Part III and the regulations;
14. governing the construction, alteration, renovation, extension, furnishing and equipping of homes operated or supervised by societies, other than children's residences as defined in Part IX (Residential Licensing), where residential care is provided to children;
15. prescribing reports to be made and information to be provided under section 55, their form and the intervals at which they are to be made or provided;
16. prescribing entities and the reports and information to be provided to them and the manner in which they are to be provided for the purpose of section 56;
17. prescribing information and the manner of making it public for the purpose of section 57;
18. prescribing other persons to whom a program supervisor shall give an inspection report for the purposes of clause 60 (1) (c);
19. prescribing rules to determine whether a child resides within an advisory committee's jurisdiction;
20. prescribing practices, procedures and further duties for advisory committees.

#### **Standards of service, etc.**

- (2) A regulation made under paragraph 3 of subsection (1),
  - (a) may exempt one or more societies from anything that is prescribed under that paragraph;
  - (b) may prescribe standards of services that only apply to one or more societies provided for in the regulations;
  - (c) may prescribe procedures and practices that are only required to be followed by one or more societies provided for in the regulations.

#### **Amounts of payments to societies**

- (3) A regulation made under paragraph 5 of subsection (1) is, if it so provides, effective with reference to a period before it is filed.

#### **Lieutenant Governor in Council regulations**

- (4) The Lieutenant Governor in Council may make regulations for the purposes of Part III,
  1. governing the transfer and assignment of assets of service providers and lead agencies for the purposes of section 28;
  2. establishing and respecting categories of lead agencies for the purposes of subsection 29 (4);
  3. prescribing the functions of each lead agency category for the purposes of subsection 29 (5);
  4. prescribing matters about which the Minister may issue directives for the purposes of subsection 31 (2);

5. prescribing other duties of a society for the purposes of clause 34 (1) (g);
6. respecting the composition of boards of directors of societies, including prescribing qualifications or eligibility criteria for board members, and requiring board members to undertake training programs and prescribing those programs;
7. prescribing the number of First Nations, Inuit or Métis representatives on the boards of directors of societies, the manner of their appointment and their terms, for the purpose of subsection 35 (1);
8. prescribing provisions to be included in the by-laws of societies for the purpose of subsection 35 (3);
9. providing for an executive committee of the board of directors of a society, its composition, quorum, powers and duties;
10. prescribing fees that may be charged for services and the conditions under which a fee may be charged;
11. respecting matters that relate to or arise as a result of an amalgamation under section 46 or a Minister's order under section 47, including rules governing court orders made with respect to a society;
12. prescribing grounds for the purposes of subclause 59 (2) (c) (ii).

### **Restructuring**

(5) A regulation made under paragraph 11 of subsection (4) prevails over the *Corporations Act* or regulations made under that Act to the extent of any conflict.

### **Regulations: Part IV (First Nations, Inuit and Métis Child and Family Services)**

#### **Lieutenant Governor in Council regulations**

**319** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part IV,

1. modifying or excluding the application of any provision or requirement of this Act or the regulations to a First Nations, Inuit or Métis child and family service authority, a band or First Nations, Inuit or Métis community or specified persons or classes of persons, including persons caring for children under customary care, and providing for other provisions or requirements to apply instead of or in addition to the provisions or requirements of this Act and the regulations.

#### **Minister's regulations**

(2) The Minister may make regulations for the purposes of Part IV,

1. governing the process for establishing lists of First Nations, Inuit or Métis communities in a regulation made under subsection 67 (1), including procedures that a community must follow and requirements that a community must meet;
2. prescribing matters requiring consultation between ~~societies or agencies~~ societies, persons or entities and bands or First Nations, Inuit or Métis communities for the purposes of clause 71 (i);
3. governing consultations with bands and First Nations, Inuit or Métis communities under sections 71 and 72 and prescribing the procedures and practices to be followed by ~~societies and agencies~~ societies, persons and entities and the duties of ~~societies and agencies~~ societies, persons and entities during the consultations;
4. prescribing services and powers for the purposes of section 72.

### **Regulations: Part V (Child Protection)**

#### **Lieutenant Governor in Council regulations**

**320** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part V,

1. prescribing jurisdictions outside Canada whose court orders may be recognized as extra-provincial child protection orders, and conditions for such recognition;
2. prescribing additional circumstances and conditions that constitute a 16 or 17 year old being in need of protection for the purpose of clause 73 (2) (o);
3. governing the exercise of the powers of entry set out in subsections 80 (6) and (10) and 84 (1) and (2);
4. prescribing methods of alternative dispute resolution for the purpose of section 92;
5. assigning to a Director any powers, duties or obligations of the Crown with respect to children who are in extended society care under an order made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c);
6. prescribing additional criteria for when an assessment may be ordered under section 95, and governing the scope of an assessment and the form of an assessment report under that section;
7. respecting applications for a review by the Board under subsection 106 (8);
8. prescribing additional practices and procedures for the purposes of subsection 106 (11);

9. prescribing the qualifications or experience a member of the Board is required to have in order to conduct reviews under subsection 106 (9), 116 (6) or 117 (5);
10. respecting the making of complaints to a society under subsection 116 (1) or to the Board under subsection 116 (5) or 117 (3);
11. prescribing matters for the purposes of paragraph 2 of subsection 116 (5) and paragraph 6 of subsection 117 (4);
12. prescribing additional orders that may be made by the Board for the purposes of clauses 116 (10) (d) and 117 (7) (f);
13. prescribing practices and procedures for the purposes of hearings conducted by the Board under subsection 116 (8) or during a review of a complaint under section 117;
14. respecting the format of warrants under sections 128 and 129 and the procedures to be followed in applying for, issuing, receiving and filing warrants of different formats;
15. prescribing manners of applying for a warrant under section 129, including a manner other than submitting an information on oath, setting out the circumstances under which those manners may be used and providing for any additional requirements that must be met if those manners are used;
16. respecting the manner in which the register referred to in subsection 130 (5) is to be kept;
17. requiring the removal of a name from the register referred to in subsection 130 (5), or the amendment of the register, under specified circumstances, and specifying those circumstances;
18. prescribing practices and procedures for hearings held under clause 131 (4) (b).

### **Minister's regulations**

(2) The Minister may make regulations for the purposes of Part V,

1. prescribing requirements and purposes for the purpose of the definition of child protection worker;
2. respecting the procedures to be followed by a society or a child and family service authority for the purposes of subsection 73 (5);
3. prescribing additional provisions to be included in a temporary care agreement for the purpose of paragraph 7 of subsection 74 (10);
4. prescribing the manner of varying a temporary care agreement under subsection 74 (12);
5. prescribing duties and obligations of societies and rights and responsibilities of children in respect of agreements made under section 76 (agreements with 16 and 17 year olds), including prescribing the services and supports that may be provided under them, prescribing additional circumstances for making such agreements and provisions to be contained in them and governing their variation and termination;
6. prescribing the complaint review procedure that societies are required to follow for the purpose of subsection 116 (2);
- ~~7. prescribing the care and support that may be provided to persons under section 121 and the terms and conditions on which the care and support may be provided;~~
- ~~7. governing agreements entered into under section 121, including prescribing entities required to enter into the agreements, the expiry, renewal and termination of the agreements, the provisions to be included in the agreements, the care and support to be provided to persons under the agreements, the terms and conditions on which the care and support is to be provided and any exceptions to the requirement that an agreement be entered into or that care and support be provided under section 121;~~
8. prescribing support services for the purposes of paragraph 3 of subsection 121 (1);
9. prescribing circumstances and conditions for the purposes of subsection 122 (4);
10. respecting assessments to be made under subsection 123 (1).

### **Regulations: Part VI (Youth Justice)**

**321** The Lieutenant Governor in Council may make regulations for the purposes of Part VI,

1. governing the establishment, operation, maintenance, management and use of places of temporary detention, of open custody and of secure custody;
2. governing the establishment and operation of and the accommodation, equipment and services to be provided in any premises established, operated, maintained or designated for the purposes of the *Youth Criminal Justice Act* (Canada);
3. prescribing additional duties and functions of,
  - i. probation officers, and
  - ii. provincial directors;



4. prescribing the duties and functions of bailiffs;
5. prescribing the qualifications of probation officers;
6. prescribing additional duties and functions of persons in charge of places of temporary detention, of open custody and of secure custody;
7. prescribing reports to be made and information to be furnished under section 144, their form and the intervals at which they are to be made or furnished;
8. governing the conduct, discipline, rights and privileges of young persons in places of temporary detention, of open custody or of secure custody;
9. prescribing procedures for the admission of young persons to and their discharge from places of temporary detention, of open custody or of secure custody or premises in which a service is provided;
10. prescribing the number of members of the Board and the number of members that is a quorum;
11. prescribing additional powers, duties and procedures of the Board;
12. governing the exercise of the power of entry given under subsection 150 (5);
13. governing searches under subsection 152 (1);
14. prescribing procedures for the seizure and disposition of contraband found during a search;
15. respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of Part VI.

#### **Regulations: Part VII (Extraordinary Measures)**

**322** The Lieutenant Governor in Council may make regulations for the purposes of Part VII,

1. prescribing procedures for the admission of persons to and their discharge from secure treatment programs;
2. prescribing standards for secure treatment programs;
3. governing policies on the use of mechanical restraints required by section 157, including prescribing provisions that must be or may not be included;
4. prescribing standards for secure de-escalation rooms;
5. prescribing procedures to be followed when a child or young person is placed in or released from a secure de-escalation room;
6. prescribing the frequency of reviews under subsection 171 (6);
7. prescribing additional standards and procedures with which a service provider must comply under subsection 171 (9);
8. prescribing matters to be reviewed and prescribing additional reports under section 172;
9. prescribing procedures as intrusive procedures;
10. prescribing drugs, combinations of drugs or classes of drugs as psychotropic drugs.

#### **Regulations: Part VIII (Adoption and Adoption Licensing)**

**323** (1) The Lieutenant Governor in Council may make regulations for the purposes of Part VIII,

1. designating a person or body to exercise powers and perform duties with respect to adoption;
2. governing the person or body designated under paragraph 1, including prescribing the powers and duties of the person or body;
3. prescribing criteria for the purposes of the definition of "birth parent" in subsection 176 (1);
4. prescribing matters for the purposes of clause 177 (4) (b);
5. prescribing special circumstances for the purposes of subsection 185 (9) (placement outside Canada);
6. governing applications for review under subsection 189 (3);
7. prescribing additional practices and procedures for the purposes of subsection 189 (7);
8. prescribing the qualifications or experience a member of the Board is required to have for the purpose of subsection 189 (8);
9. governing procedures to be followed by a Director in making a review under subsection 190 (3), what types of decisions and directions the Director is authorized to make after conducting a review, and any consequences following as a result of a decision or direction;

10. prescribing an alternative dispute resolution method for the purposes of subsections 195 (8) and 204 (9);
11. governing the placement of children for adoption;
12. prescribing rules and standards governing the placement of children for adoption by licensees;
13. governing openness orders under Part VIII;
14. prescribing persons for the purposes of clause 219 (3) (d);
15. prescribing the powers and duties of a designated custodian under section 220 and governing the fees that the designated custodian may charge in connection with the exercise of its powers and the performance of its duties;
16. governing the disclosure of information under section 221 to a designated custodian;
17. governing the disclosure of information under section 222 by the Minister, a society, a licensee or a designated custodian;
18. establishing and governing a mechanism for the review or appeal of a decision made by the Minister, a society, a licensee or a designated custodian concerning the disclosure of information under section 221 or 222;
19. governing the fees that a society, licensee or designated custodian may charge for the disclosure of information under section 221 or 222;
20. governing the inspection, removal or alteration of information related to an adoption for the purposes of clause 224 (1) (b);
21. exempting a licensee or class of licensees from any or all provisions or requirements of Part VIII or the regulations under it, either indefinitely or for a specified period;
22. governing the issuing, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;
23. prescribing grounds for which the issuance of a licence may be refused for the purposes of clause 228 (c);
24. prescribing grounds for which a licence may be revoked or the renewal of a licence may be refused for the purposes of clause 229 (e);
25. prescribing expenses that may be charged under clause 237 (d) and the conditions under which such expenses may be charged.

### **Functions of Central Authority**

(2) In subsection (3),

“Central Authority” means the Central Authority designated under clause 24 (a) of the *Intercountry Adoption Act, 1998*; (“Autorité centrale”)

“Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, set out in the Schedule to the *Intercountry Adoption Act, 1998*. (“Convention”)

### **Same**

(3) The Lieutenant Governor in Council may make regulations assigning functions of the Central Authority under Part VIII to public authorities, accredited bodies or persons in accordance with Article 22 of the Convention.

### **Minister’s regulations**

(4) The Minister may make regulations for the purposes of Part VIII,

1. prescribing the form of an affidavit of execution for the purposes of subsection 177 (12);
2. prescribing the manner in which placements are to be registered under subsection 180 (7);
3. prescribing persons for the purposes of subclause 185 (3) (b) (ii);
4. prescribing persons and entities and timing requirements for the purposes of clause 235 (b);
5. prescribing the accounts and records to be kept by licensees;
6. requiring licensees and applicants for a licence or renewal of a licence to provide information, returns and reports, and respecting the manner in which the information, returns and reports must be provided;
7. providing for the inspection of the records of licensees;
8. governing the qualifications of persons employed by licensees;

9. requiring licensees to be bonded or to submit letters of credit in the prescribed form and terms and with the prescribed collateral security, prescribing the form, terms and collateral security and providing for the forfeiture of bonds and letters of credit and the disposition of the proceeds.

### **Regulations: Part IX (Residential Licensing)**

#### **Lieutenant Governor in Council regulations**

**324 (1)** The Lieutenant Governor in Council may make regulations for the purposes of Part IX,

1. prescribing other residences for the purposes of paragraph 3 of the definition of “children’s residence” in section 240;
2. prescribing other places for the purposes of paragraph 12 of the definition of “children’s residence” in section 240;
3. prescribing circumstances in which a licence is required to provide residential care for the purposes of subparagraph 2 ii of section 241;
4. prescribing circumstances for the purposes of section 248;
5. prescribing matters about which the Minister may issue directives for the purposes of subsection 249 (1);
6. governing reviews and appeals under section 257;
7. governing the issuance, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;
8. prescribing grounds for which the issuance of a licence may be refused for the purposes of clause 258 (f);
9. prescribing grounds for which a licence may be revoked or the renewal of a licence may be refused for the purposes of clause 259 (g);
10. prescribing other powers and duties of an inspector for the purposes of subsection 270 (3);
11. prescribing other powers of an inspector for the purposes of clause 273 (1) (i);
- ~~12. prescribing standards and procedures for the use of physical restraints in children’s residences or other places where residential care is provided under the authority of a licence;~~
13. prescribing provisions of Part IX or the regulations for the purposes of clause 277 (1) (i);
14. prescribing provisions of Part IX or the regulations for the purposes of clause 277 (3) (c).

#### **Minister’s regulations**

**(2)** The Minister may make regulations for the purposes of Part IX,

1. prescribing or otherwise providing for anything required or permitted by Part IX, except anything referred to in subsection (1) of this section, to be prescribed or otherwise provided for in the regulations, including governing anything required or permitted to be done in accordance with the regulations;
2. specifying and governing classes of licence that may be assigned for the purposes of section 255;
3. governing the amount or method of determining the amount that a licensee may charge for the provision of residential care under the authority of a licence for the purposes of section 265, including governing reviews and variation of the amount or method and circumstances in which a licensee may charge a different amount than the amount that could otherwise be charged;
4. governing the management and operation of, and the accommodation, facilities, equipment and services to be provided in, children’s residences and other places where residential care is provided under the authority of a licence;
5. specifying and governing performance standards and performance measures with respect to the provision of services in children’s residences or other places where residential care is provided under the authority of a licence, including standards with respect to quality of care and responsiveness to cultural needs;
6. prescribing the accounts and records to be kept by licensees;
7. prescribing the qualifications, powers and duties of persons supervising children in children’s residences or other places where residential care is provided under the authority of a licence;
8. prescribing screening measures to be conducted for licensees, applicants for a licence or renewal of a licence and other persons providing residential care to children in children’s residences or other places where residential care is provided under the authority of a licence;
9. governing procedures for the admission to and discharge of children from children’s residences or other places where residential care is provided under the authority of a licence;



10. requiring licensees and applicants for a licence or renewal of a licence to provide information, returns and reports, and respecting the manner in which the information, returns and reports must be provided.

### **Regulations: Part X (Personal Information)**

**325** The Lieutenant Governor in Council may make regulations for the purposes of Part X,

1. prescribing persons for the purpose of paragraph 2 of subsection 279 (2);
2. prescribing other ministers with whom the Minister may share information for the purposes of subsection 279 (5);
3. prescribing requirements and restrictions in relation to research and analysis for the purposes of subsection 279 (7);
- ~~4. prescribing and governing methods of giving notice under clause 279 (8) (b);~~
4. prescribing and governing methods of giving notice under clauses 279 (8) (b) and 280 (3) (b);
5. prescribing the purposes for the collection under section 280;
- ~~6. prescribing purposes related to a society's functions for the purposes of subclause 284 (2) (b) (ii) and clause 288 (2) (b);~~
6. prescribing purposes related to a society's functions for the purposes of clause 284 (2) (b.1), subclause 287 (2) (a) (ii) and subsection 288 (2.1);
7. specifying requirements that an express instruction mentioned in clause 287 (1) (a) must meet;
- ~~8. prescribing requirements and restrictions for the purposes of clauses 284 (2) (d), 287 (1) (j) and (k) and 288 (1) (h) and subsections 289 (2) and (3) and 298 (1) and (4);~~
8. prescribing requirements and restrictions for the purposes of clauses 284 (2) (d), 287 (1) (j) and (k) and 288 (1) (h) and subsections 289 (2) and (3), 296.1 (10), 298 (1) and (4) and 298.1 (10);
9. prescribing entities for the purpose of section 289;
10. prescribing information and circumstances for the purposes of subsection 289 (4);
11. prescribing exceptions and additional requirements for the purposes of subsection 289 (9);
- ~~12. prescribing a body for the purposes of section 298;~~
12. prescribing a body for the purposes of sections 296.1, 298 and 298.1;
13. prescribing information for the purpose of subsection 298 (2);
14. prescribing persons for the purpose of subsection 298 (3);
15. prescribing provisions and prescribing and governing the manner of recording disclosures for the purpose of subsection 299 (3);
16. prescribing exceptions and additional requirements for the purposes of subsection 301 (2);
17. prescribing requirements for the purposes of subsection 301 (3) and clause 302 (1) (b);
18. prescribing circumstances for the purposes of subsection 305 (10) and governing the fees that may be charged in those circumstances;
19. permitting notices, statements or any other things, that under this Part are required to be provided in writing, to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified by the regulations made under this section;
20. requiring service providers to provide information to the Commissioner and specifying the type of information to be provided and the time at which and manner in which it is to be provided.

### **Regulations: Part XI (Miscellaneous Matters)**

**326** The Lieutenant Governor in Council may make regulations for the purposes of Part XI,

1. prescribing the number of members of the Board and the number of members that is a quorum;
2. prescribing additional powers, duties and procedures of the Board;
3. respecting police record checks for the purposes of section 312, including,
  - i. requiring different classes of persons to provide different types of police record checks or different types of information as part of a check,
  - ii. prescribing procedures and practices to be followed when a police record check is required,
  - iii. prescribing other persons for the purposes of paragraph 3 of section 312, and
  - iv. requiring police record checks to be obtained from jurisdictions outside Ontario in specified circumstances;

- ~~4. prescribing other entities from whom a society may request police record checks under section 313, prescribing other information that may be requested, and respecting the police record checks and other information that may be requested.~~
4. respecting police record checks for the purposes of section 313, including,
- i. prescribing other entities from whom a society may request police record checks or other information,
  - ii. prescribing other information that may be requested,
  - iii. prescribing circumstances in which and purposes for which the request may be made, and
  - iv. prescribing procedures and practices to be followed when a police record check or other information is requested.

### PART XIII REPEAL, COMMENCEMENT AND SHORT TITLE

#### Repeal

327 *The Child and Family Services Act* is repealed.

#### Commencement

328 The Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

#### Short title

329 The short title of the Act set out in this Schedule is the *Child, Youth and Family Services Act, 2017*.

**SCHEDULE 2**  
**AMENDMENTS TO THE CHILD AND FAMILY SERVICES ACT**

**1 Clauses 15 (3) (a) and (b) of the *Child and Family Services Act* are repealed and the following substituted:**

- (a) investigate allegations or evidence that children may be in need of protection;
- (b) protect children where necessary;

**2 (0.1) Subsection 27 (1) of the Act is repealed and the following substituted:**

**Consent to service**

**Consent to service: person 16 or older**

(1) Subject to clause (2) (b) and subsection (3.1), a service provider may provide a service to a person who is 16 years of age or older only with the person's consent, except where the court orders under this Act that the service be provided to the person.

**2-(1) Subsections 27 (2) and (3) of the Act are repealed and the following substituted:**

**Consent to residential service: child under 16 or in society's care**

(2) A service provider may provide a residential service to a child,

- (a) if the child is less than 16 years of age, with the consent of the child's parent; and
- (b) if the child is in a society's lawful custody, with the society's consent,

except where this Act provides otherwise.

**Exception — Part III**

~~(3) Subsection (1) does not apply where a service is provided to a child under Part III (Child Protection).~~

**Exception — Part IV**

(3.1) Subsections (1) and (2) do not apply where a service is provided to a young person under Part IV (Youth Justice).

**(2) Subsection 27 (4) of the Act is amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b) and by adding the following clause:**

- (c) where the placement is made under the authority of an agreement made under subsection 37.1 (1) (agreements with 16 and 17 year olds), in accordance with subsection 37.1 (4) (notice of termination).

**3 Subsection 29 (2) of the Act is repealed and the following substituted:**

**Child's age**

(2) No temporary care agreement shall be made in respect of a child who is 12 years of age or older, unless the child is a party to the agreement.

**4 (1) The definition of "child" in subsection 37 (1) of the Act is repealed.**

**(2) Subsection 37 (2) of the Act is amended by striking out "or" at the end of clause (k), by adding "or" at the end of clause (l) and by adding the following clause:**

- (m) the child is 16 or 17 years of age and a prescribed circumstance or condition exists.

**5 The Act is amended by adding the following section:**

**Society agreements with 16 and 17 year olds**

**37.1** (1) The society and a child who is 16 or 17 years of age may make a written agreement for services and supports to be provided for the child where,

- (a) the society has jurisdiction where the child resides;
- (b) the society has determined that the child is or may be in need of protection;
- (c) the society is satisfied that no course of action less disruptive to the child, such as care in the child's own home or with a relative, neighbour or other member of the child's community or extended family, is able to adequately protect the child; and
- (d) the child wants to enter into the agreement.



**Same**

(1.1) The society may make a written agreement under subsection (1) where a temporary care agreement in respect of the child is terminated, expires or is about to expire as described in section 33 and is not extended, and may do so before the agreement terminates or expires.

**Term of agreement**

(2) The agreement may be for a period not exceeding 12 months, but may be renewed if the total term of the agreement, as extended, does not exceed 24 months.

**Previous or current involvement with society not a bar to agreement**

(3) A child may enter into an agreement under this section regardless of any previous or current involvement with a society, and without regard to any time during which the child has been in a society's care pursuant to an agreement made under section 29 or pursuant to an order made under clause 51 (2) (d), paragraph 2 or 3 of subsection 57 (1) or subsection 65.2 (1).

**Notice of termination of agreement**

(4) A party to an agreement made under this section may terminate the agreement at any time by giving every other party written notice that the party wishes to terminate the agreement.

**Agreement expires at 18**

(5) No agreement made under this section shall continue beyond the eighteenth birthday of the person who is its subject.

**Current proceedings and orders must be terminated first**

(6) ~~Despite subsection (3), an agreement may not be made~~ may not come into force under this section until any temporary care agreement under section 29 or order for the care or supervision of a child under this Part is terminated.

**Representation by Children's Lawyer**

(7) The Children's Lawyer may provide legal representation to the child entering into an agreement under this section if, in the opinion of the Children's Lawyer, such legal representation is appropriate.

**5.1 (1) The English version of subsection 40 (2) of the Act is amended by adding the following clause:**

(0.a) the child is less than 16 years old;

**(2) The French version of subsection 40 (2) of the Act is revoked and the following substituted:****Mandat d'amener un enfant**

(2) Un juge de paix peut décerner un mandat autorisant un préposé à la protection de l'enfance à amener un enfant dans un lieu sûr s'il est convaincu, à la suite d'une dénonciation faite sous serment par un préposé à la protection de l'enfance, qu'il existe des motifs raisonnables et probables de croire ce qui suit :

0.a) l'enfant a moins de 16 ans;

a) l'enfant a besoin de protection;

b) un autre plan d'action moins restrictif n'est pas disponible ou ne protégera pas suffisamment l'enfant.

**(3) The English version of subsection 40 (7) of the Act is amended by striking out "and" at the end of clause (a) and by adding the following clause:**

(a.1) the child is less than 16 years old; and

**(4) The French version of subsection 40 (7) of the Act is revoked and the following substituted:****Appréhension de l'enfant sans mandat**

(7) Le préposé à la protection de l'enfance peut, sans mandat, conduire un enfant dans un lieu sûr si, en se fondant sur des motifs raisonnables et probables, il croit ce qui suit :

a) l'enfant a besoin de protection;

a.1) l'enfant a moins de 16 ans;

b) la santé ou la sécurité de l'enfant risqueraient vraisemblablement d'être compromises pendant le laps de temps nécessaire à l'obtention d'une audience en vertu du paragraphe 47 (1) ou d'un mandat en vertu du paragraphe (2).

**5.2 The Act is amended by adding the following section:****Exception, 16 or 17 year old brought to place of safety or apprehended with consent**

**40.1 (1) A child protection worker may bring a child who is 16 or 17 years old and who is subject to a temporary or final supervision order to a place of safety if the child consents.**

## **Temporary or final supervision order**

**(2) In this section,**

**“temporary or final supervision order” means an order under clause 51 (2) (b) or (c), paragraph 1 or 4 of subsection 57 (1), subsection 64 (8) or 65.1 (10) or clause 65.2 (1) (a).**

**6 (1) Clause 41 (1) (a) of the Act is repealed and the following substituted:**

— (a) the child has left or been removed from a society’s lawful care and custody without its consent; and

**(2) Clause 41 (4) (a) of the Act is repealed and the following substituted:**

— (a) the child has left or been removed from a society’s lawful care and custody without its consent; and

**7 Subsection 46 (1) of the Act is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following clause:**

(d) an agreement shall be made under section 37.1 (agreements with 16 and 17 year olds).

**7.1 The Act is amended by adding the following section:**

### **Time in place of safety limited, 16 or 17 years old**

**46.1 As soon as practicable, but in any event within five days after a child who is 16 or 17 years old is brought to a place of safety with the child’s consent under section 40.1,**

**(a) the matter shall be brought before a court for a hearing under subsection 47 (1); or**

**(b) the child shall be returned to the person entitled to custody of the child under an order made under this Part.**

**8 Subsection 47 (3) of the Act is repealed.**

**9 Section 57 of the Act is amended by adding the following subsection:**

### **No order where child not subject to parental control**

(10) Where the court finds that a child who was not subject to parental control immediately before intervention under this Part by virtue of having withdrawn from parental control or who withdraws from parental control after intervention under this Part is in need of protection, but is not satisfied that a court order is necessary to protect the child in the future, the court shall make no order in respect of the child.

**10 Section 71.1 of the Act is amended by adding the following subsection:**

### **Same**

(1.1) A society may provide care and maintenance to a person in accordance with the regulations if,

(a) the person entered into an agreement with the society under section 37.1 (agreements with 16 and 17 year olds); and

(b) the agreement expired on the person’s eighteenth birthday.

**11 Section 72 of the Act is amended by adding the following subsection:**

### **Duty to report does not apply to older children**

(3.1) Subsections (1) and (2) do not apply in respect of a child who is 16 or 17 years old, but a person may make a report under subsection (1) or (2) in respect of a child who is 16 or 17 years old if either a circumstance or condition described in paragraphs 1 to 11 of subsection (1) or a prescribed circumstance or condition exists.

**12 (1) Subsection 216 (1) of the Act is amended by adding the following clauses:**

(a.2) prescribing additional circumstances and conditions that constitute a child under 18 years of age being in need of protection for the purpose of clause 37 (2) (m);

(i) governing transitional matters that may arise due to the amendments to this Act made by Schedule 2 to the *Supporting Children, Youth and Families Act, 2017*.

**(2) Section 216 of the Act is amended by adding the following subsection:**

### **Conflicts**

(1.1) If there is a conflict between a regulation made under clause (1) (i) and any provision of this Act or the regulations, the regulation made under clause (1) (i) prevails.

**(3) Subsection 216 (2) of the Act is amended by adding the following clauses:**

(0.a) prescribing duties and obligations of societies and rights and responsibilities of children in respect of agreements made under section 37.1 (agreements with 16 and 17 year olds), including prescribing the services and supports that may be

provided under them, prescribing additional circumstances for making such agreements and provisions to be contained in them and governing their variation and termination;

(c) prescribing circumstances and conditions for the purposes of subsection 72 (3.1).

**12.1 The Act is amended by adding the following section:**

**Regulations: defining words or expressions in Act**

**223.0.1** The Lieutenant Governor in Council may make regulations defining any word or expression used in this Act that is not already defined in this Act and further defining any word or expression used in this Act that is already defined in this Act.

**Commencement**

**13** This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.



**SCHEDULE 3**  
**AMENDMENTS TO THE CHILD, YOUTH AND FAMILY SERVICES ACT, 2017**

**1** Paragraph 7 of subsection 45 (5) of the *Child, Youth and Family Services Act, 2017* is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”.

**2** (1) Subsection 46 (3) of the Act is amended by striking out “subsection 113 (2) of the *Corporations Act*” and substituting “subsection 110 (2) of the *Not-for-Profit Corporations Act, 2010*”.

**(2)** Subsection 46 (4) of the Act is repealed and the following substituted:

**Minister approval of articles of amalgamation**

(4) The societies shall not file articles of amalgamation under section 112 of the *Not-for-Profit Corporations Act, 2010* until the articles have first received the approval of the Minister.

**3** (1) Paragraph 2 of subsection 47 (10) of the Act is amended by striking out “the *Corporations Act* or any letters patent, supplementary letters patent or by-laws” at the end and substituting “the *Not-for-Profit Corporations Act, 2010* or any articles or by-laws”.

**(2)** Subsection 47 (13) of the Act is repealed and the following substituted:

**Minister approval of articles of amalgamation**

(13) A society shall not file articles of amalgamation under section 112 of the *Not-for-Profit Corporations Act, 2010* until the articles have first received the approval of the Minister.

**4** Section 49 of the Act is repealed and the following substituted:

**Conflict with society’s articles or by-laws**

49 In the event of a conflict between sections 43 to 48 and a society’s articles or by-laws, sections 43 to 48 prevail.

**5** Subsection 85 (2) of the Act is repealed and the following substituted:

**Application**

(2) This section applies to hearings held under this Part.

**6** Subsection 124 (2) of the Act is repealed and the following substituted:

**Definition**

(2) In this section and section 126,

“to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 73 (2) (a), (c), (e), (f), (g) or (j).

**7** Sections 130 and 131 of the Act are repealed.

**8** (1) Clauses 139 (1) (c) and (d) of the Act are repealed.

**(2)** Subsection 139 (3) of the Act is amended by striking out “or 131 (11)”.

**9** Subsection 203 (1) of the Act is repealed and the following substituted:

**Change of name**

(1) Subject to subsection (1.1), when the court makes an order under section 196, the court may, at the request of the applicant or applicants,

- (a) change the person’s surname to any surname that the person could have been given if the person had been born in Ontario to the applicant or applicants at the time of the order;
- (b) change the person’s forename;
- (c) change the person’s surname as described in clause (a) and change the person’s forename;
- (d) change the person’s single name to a single name that is determined in accordance with the traditional culture of the person or the applicant or applicants if the Registrar General under the *Vital Statistics Act* approves the single name;
- (e) change the person’s single name to a name with at least one forename and a surname as described in clause (a); or
- (f) change the person’s forename and surname to a single name that is determined in accordance with the traditional culture of the person or the applicant or applicants if the Registrar General under the *Vital Statistics Act* approves the single name.

**Same**

(1.1) A court shall not make a change described in subsection (1) unless,

- (a) doing so is in the best interests of the child, if the person adopted is a child; and
- (b) the person adopted consents, if the person is 12 or older.

**10** Clause (a) of the definition of “non-profit agency” in subsection 226 (7) of the Act is amended by striking out “Part III of the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010* or a predecessor of that Act”.

**10.1** Section 278.1 of the Act is amended by striking out “and 131 (11)”.

**11** Subsection 281 (5) of the Act is repealed and the following substituted:

**Exceptions — other matters**

~~(5) Sections 282 to 310 do not apply to,~~

- ~~—(a) information that is subject to a publication ban set out in subsection 85 (8), (9) or (10);~~
- ~~—(b) records to which subsection 127 (6) or (8) apply;~~
- ~~—(c) reports for which an order was made under subsection 160 (6).~~

**Exceptions — other matters**

(5) Sections 282 to 310 do not apply to,

- (a) records to which subsection 127 (6) or (8) apply; or
- (b) reports for which an order was made under subsection 160 (6).

**12** Subsection 318 (5) of the Act is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”.

**13** Paragraphs 16, 17 and 18 of subsection 320 (1) of the Act are repealed.

**Commencement**

**14** (1) Subject to subsection (2), this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Sections 1 to 4, 10 and 12 come into force on the first day that section 327 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* and subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* are both in force.

## SCHEDULE 4 AMENDMENTS TO OTHER ACTS

### *Assessment Act*

**1 Paragraph 13 of subsection 3 (1) of the *Assessment Act* is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

### *Broader Public Sector Accountability Act, 2010*

**2 Clause (d) of the definition of “designated broader public sector organization” in subsection 1 (1) of the *Broader Public Sector Accountability Act, 2010* is repealed and the following substituted:**

- (d) every agency designated as a children’s aid society under subsection 33 (1) of Part III of the *Child, Youth and Family Services Act, 2017*,

### *Child Care and Early Years Act, 2014*

**3 (1) Subsection 18 (4) of the *Child Care and Early Years Act, 2014* is repealed and the following substituted:**

#### **Duty to report under *Child, Youth and Family Services Act, 2017***

(4) Nothing in this section affects the duty to report a suspicion under section 122 of the *Child, Youth and Family Services Act, 2017*.

**(2) Subsection 23 (10) of the Act is repealed and the following substituted:**

#### **Application of *Child, Youth and Family Services Act, 2017***

(10) Sections 263 and 264 of Part IX of the *Child, Youth and Family Services Act, 2017* apply with necessary modifications to proceedings before the Tribunal, its powers and appeals of its orders.

### *Children’s Law Reform Act*

**4 (1) Clause 4 (2) (b) of the *Children’s Law Reform Act* is amended by striking out “section 158 or 159 of the *Child and Family Services Act*” and substituting “section 214 or 215 of the *Child, Youth and Family Services Act, 2017*”.**

**(2) Clause 21 (2) (b) of the Act is repealed and the following substituted:**

- (b) information respecting the person’s current or previous involvement in any family proceedings, including proceedings under Part V of the *Child, Youth and Family Services Act, 2017* (Child protection), or in any criminal proceedings; and

**(3) Subsection 21.2 (1) of the Act is repealed and the following substituted:**

#### **CAS records search, non-parents**

##### **Definition**

(1) In this section,

“society” means an agency designated as a children’s aid society under the *Child, Youth and Family Services Act, 2017*.

**(4) Subsection 21.2 (9) of the Act is repealed and the following substituted:**

##### **Interpretation**

(9) Nothing done under this section constitutes publication of information or making information public for the purposes of subsection 85 (8) of the *Child, Youth and Family Services Act, 2017* or an order under clause 70 (1) (b) of this Act.

**(5) Subsection 21.3 (6) of the Act is repealed and the following substituted:**

##### **Interpretation**

(6) Nothing done under this section constitutes publication of information or making information public for the purposes of subsection 85 (8) of the *Child, Youth and Family Services Act, 2017* or an order under clause 70 (1) (b) of this Act.

**(6) Subsection 26 (1.1) of the Act is repealed and the following substituted:**

##### **Exception**

(1.1) Subsection (1) does not apply to an application under this Part that relates to the custody of or access to a child if the child is the subject of an application or order under Part V of the *Child, Youth and Family Services Act, 2017*, unless the application under this Part relates to,

- (a) an order in respect of the child that was made under subsection 99 (1) of the *Child, Youth and Family Services Act, 2017*;
- (b) an order referred to in subsection 99 (3) of the *Child, Youth and Family Services Act, 2017* that was made at the same time as an order under subsection 99 (1) of that Act; or



- (c) an access order in respect of the child under section 101 of the *Child, Youth and Family Services Act, 2017* that was made at the same time as an order under subsection 99 (1) of that Act.

**(7) Subsections 28 (2) and (3) of the Act are repealed and the following substituted:**

**Exception**

(2) If an application is made under section 21 with respect to a child who is the subject of an order made under section 99 of the *Child, Youth and Family Services Act, 2017*, the court shall treat the application as if it were an application to vary an order made under this section.

**Same**

(3) If an order for access to a child was made under Part V of the *Child, Youth and Family Services Act, 2017* at the same time as an order for custody of the child was made under section 99 of that Act, the court shall treat an application under section 21 of this Act relating to access to the child as if it were an application to vary an order made under this section.

***Christopher's Law (Sex Offender Registry), 2000***

**5 The definition of "youth custody facility" in subsection 4.1 (5) of *Christopher's Law (Sex Offender Registry), 2000* is repealed and the following substituted:**

"youth custody facility" means a place of open custody or a place of secure custody, as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*. ("lieu de garde")

***City of Toronto Act, 2006***

**6 (1) Clause (a) of the definition of "local board (restricted definition)" in subsection 8 (6) of the *City of Toronto Act, 2006* is repealed and the following substituted:**

(a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,

**(2) Clause 145 (3) (a) of the Act is repealed and the following substituted:**

(a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*;

**(3) Clause (a) of the definition of "local board (restricted definition)" in section 156 of the Act is repealed and the following substituted:**

(a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,

***Compensation for Victims of Crime Act***

**7 The definition of "child" in section 1 of the *Compensation for Victims of Crime Act* is amended by striking out "sections 158 and 159 of the *Child and Family Services Act*" and substituting "sections 214 and 215 of the *Child, Youth and Family Services Act, 2017*".**

***Coroners Act***

**8 (1) Clause 10 (2) (b) of the *Coroners Act* is repealed and the following substituted:**

(b) a children's residence under Part IX (Residential Licensing) of the *Child, Youth and Family Services Act, 2017* or premises that had been approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act*, as it read before its repeal;

**(2) Subsection 10 (4.8) of the Act is repealed and the following substituted:**

**Death while restrained in secure treatment program**

(4.8) Where a person dies while being restrained and while committed or admitted to a secure treatment program within the meaning of Part VII of the *Child, Youth and Family Services Act, 2017*, the person in charge of the program shall immediately give notice of the death to a coroner and the coroner shall hold an inquest upon the body.

**(3) Section 22.1 of the Act is repealed and the following substituted:**

**Inquest mandatory**

**22.1** A coroner shall hold an inquest under this Act into the death of a child upon learning that the child died in the circumstances described in clauses 125 (a), (b) and (c) of the *Child, Youth and Family Services Act, 2017*.

***Corporations Tax Act***

**9 Clause (i) of the definition of "member of his or her family" in subsection 1 (2) of the *Corporations Tax Act* is amended by striking out "*Child and Family Services Act*" and substituting "*Child, Youth and Family Services Act, 2017*".**

### *Courts of Justice Act*

**10 (1) Paragraph 1 of the Schedule to section 21.8 of the *Courts of Justice Act* is amended by striking out “*Child and Family Services Act*, Parts III, VI and VII” and substituting “*Child, Youth and Family Services Act*, 2017, Parts V, VII and VIII”.**

**(2) Subsection 21.12 (1) of the Act is repealed and the following substituted:**

#### **Enforcement of orders**

(1) A judge presiding over the Family Court shall be deemed to be a judge of the Ontario Court of Justice for the purpose of prosecutions under Part V (Child Protection) and Part VIII (Adoption and Adoption Licensing) of the *Child, Youth and Family Services Act*, 2017, the *Children’s Law Reform Act*, the *Family Law Act* and the *Family Responsibility and Support Arrears Enforcement Act*, 1996.

**(3) Subsection 38 (2) of the Act is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act*, 2017”.**

### *Crown Employees Collective Bargaining Act, 1993*

**11 Clause (a) of the definition of “facility” in subsection 7 (5) of the *Crown Employees Collective Bargaining Act*, 1993 is repealed and the following substituted:**

(a) premises where services are provided by the Minister under the *Child, Youth and Family Services Act*, 2017,

### *Early Childhood Educators Act, 2007*

**12 Subsection 32.1 (1) of the *Early Childhood Educators Act*, 2007 is repealed and the following substituted:**

#### **Complaint, report of child in need of protection, etc.**

(1) This section applies with respect to a complaint if the Registrar believes, on reasonable grounds, that the complainant or any other person was likely required to make a report under section 122 of the *Child, Youth and Family Services Act*, 2017 in relation to the conduct or actions of the member that are the subject of the complaint.

### *Education Act*

**13 (1) Clause 45 (1) (b) of the *Education Act* is repealed and the following substituted:**

(b) boards the person in a residence that is not a children’s residence as defined in Part IX (Residential Licensing) of the *Child, Youth and Family Services Act*, 2017,

**(2) Section 47 of the Act is repealed and the following substituted:**

#### **Child subject to society care or supervision**

##### **Elementary school**

47 (1) A child who is under the care or supervision of a children’s aid society, receives child protection services from a children’s aid society or resides in a children’s residence or foster home within the meaning of the *Child, Youth and Family Services Act*, 2017, and who is otherwise qualified to be admitted to an elementary school, shall be admitted without the payment of a fee to an elementary school operated by the board of the school section or separate school zone, as the case may be, in which the child resides.

##### **Secondary school**

(2) A child who is under the care or supervision of a children’s aid society, receives child protection services from a children’s aid society or resides in a children’s residence or foster home within the meaning of the *Child, Youth and Family Services Act*, 2017, and who is otherwise qualified to be admitted to a secondary school, shall be admitted without the payment of a fee to a secondary school operated by the board of the secondary school district or separate school zone, as the case may be, in which the child resides.

### *Freedom of Information and Protection of Privacy Act*

**14 (1) Paragraphs 2, 3 and 4 of subsection 65 (8) of the *Freedom of Information and Protection of Privacy Act* are repealed and the following substituted:**

2. Disclosure vetoes registered under section 48.5 of the *Vital Statistics Act*.

3. Information and records in files that are unsealed under section 48.6 of that Act.

**(2) Paragraph 2 of subsection 67 (2) of the Act is repealed and the following substituted:**

2. Subsections 85 (8), (9) and (10), 95 (9) and (10), 127 (6), 130 (6), 131 (11) and 160 (6) and section 224 of the *Child, Youth and Family Services Act*, 2017.

**(3) Paragraph 2 of subsection 67 (2) of the Act is repealed and the following substituted:**

2. Subsections 85 (8), (9) and (10), 95 (9) and (10), 127 (6) and 160 (6) and section 224 of the *Child, Youth and Family Services Act, 2017*.

**(4) Paragraphs 4, 7 and 7.0.1 of subsection 67 (2) of the Act are repealed and the following substituted:**

4. Section 12 of the *Commodity Futures Act*.

7. Subsection 119 (1) of the *Labour Relations Act, 1995*.

7.0.1 Sections 89 and 90 and subsection 92 (6) of the *Legal Aid Services Act, 1998*.

***French Language Services Act***

**15 Clause (e) of the definition of “government agency” in section 1 of the *French Language Services Act* is repealed and the following substituted:**

- (e) a service provider as defined in the *Child, Youth and Family Services Act, 2017* or a board as defined in the *District Social Services Administration Boards Act* that is designated as a public service agency by the regulations,

***Health Care Consent Act, 1996***

**16 (1) Subsection 76 (2) of the *Health Care Consent Act, 1996* is amended by striking out “subsections 183 (2) to (6) of the *Child and Family Services Act* (withholding record of mental disorder)” at the end and substituting “subsections 290 (2) to (6) of the *Child, Youth and Family Services Act, 2017* (withholding record of mental disorder)”.**

**(2) Subsection 81 (3) of the Act is amended by striking out “section 124 of the *Child and Family Services Act*” and substituting “section 168 of the *Child, Youth and Family Services Act, 2017*”.**

***Health Protection and Promotion Act***

**17 (1) Clauses (b) and (c) of the definition of “institution” in subsection 21 (1) of the *Health Protection and Promotion Act* are repealed and the following substituted:**

- (b) premises that had been approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act*, as it read before its repeal,
- (c) “children’s residence” within the meaning of Part IX (Residential Licensing) of the *Child, Youth and Family Services Act, 2017*,

**(2) Clause 39 (2) (e) of the Act is repealed and the following substituted:**

- (e) to prevent the reporting of information under section 122 of the *Child, Youth and Family Services Act, 2017* in respect of a child who is or may be in need of protection.

***Intercountry Adoption Act, 1998***

**18 (1) Subsection 1 (1) of the *Intercountry Adoption Act, 1998* is amended by adding the following definition:**

“prescribed” means prescribed by the regulations; (“prescrit”)

**(2) Section 5 of the Act is amended by adding the following subsection:**

**Police record check**

(3.1) The person who is the subject of the adoption homestudy and such other persons who may be prescribed shall provide a police record check concerning the person to the prescribed person or body in accordance with the regulations.

~~(3) Section 8.1 of the Act is amended by striking out “During the course of a licence” at the beginning and substituting “At any time during the term of a licence”.~~

**(3) Section 8.1 of the Act is repealed and the following substituted:**

**Conditions of licence**

8.1 (1) On issuing or renewing a licence or at any other time, a Director may impose on the licence the conditions that the Director considers appropriate.

**Amending conditions**

(2) A Director may, at any time, amend the conditions imposed on the licence.

**Notice**

(3) The Director shall notify the licensee in writing of the imposition or amendment of the conditions.



### **Contents of notice**

(4) The notice shall set out the reasons for imposing or amending the conditions and shall state that the licensee is entitled to a hearing by the Tribunal if they request one in accordance with section 12.

### **Conditions take effect upon notice**

(5) The imposition or amendment of conditions takes effect immediately upon the licensee's receipt of the notice and is not stayed by a request for a hearing by the Tribunal.

### **Licensee must comply**

(6) Every licensee shall comply with the conditions to which the licence is subject.

**(4) Section 9 of the Act is amended by adding "propose to" before "refuse" in the portion before clause (a).**

**(5) Section 9 of the Act is amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b) and by adding the following clause:**

(c) a ground exists that is prescribed as a ground for refusing to issue a licence.

**(6) Section 10 of the Act is amended by striking out "may refuse to renew or may revoke" in the portion before clause (a) and substituting "may propose to revoke or refuse to renew".**

**(7) Section 10 of the Act is amended by striking out "or" at the end of clause (c), by adding "or" at the end of clause (d) and by adding the following clause:**

(e) a ground exists that is prescribed as a ground for revoking or refusing to renew a licence.

**(8) Clause 13 (3) (b) of the Act is repealed and the following substituted:**

(b) if the licensee is served with notice that the Director proposes to revoke the licence or refuse to grant the renewal, until the time for requesting a hearing has expired and, if a hearing is requested, until the Tribunal has made its decision.

**(9) Subsection 14 (1) of the Act is repealed and the following substituted:**

### **Suspension of licence**

(1) A Director may, by causing notice to be served on a licensee, suspend the licence, if in his or her opinion the manner in which intercountry adoptions are being facilitated is an immediate threat to the health, safety or welfare of children.

**(10) Subsection 14 (3) of the Act is repealed and the following substituted:**

### **When suspension takes effect**

(3) The suspension takes effect on the day the licensee receives the notice and is not stayed by a request for a hearing by the Tribunal.

**(11) Section 17 of the Act is repealed and the following substituted:**

### **Inspections by Director**

**17** (1) For the purpose of determining compliance with this Act and the regulations, a Director or a person who has a Director's written authorization may, at any reasonable time and without a warrant or notice, enter the premises of a licensee in order to conduct an inspection.

### **Limitation, dwelling**

(2) The power to enter and inspect a premises described in subsection (1) shall not be exercised to enter and inspect any room or place actually being used as a dwelling, except with the consent of the occupier.

### **Identification**

(3) A Director or a person who has a Director's written authorization conducting an inspection shall, upon request, produce proper identification.

### **Application of *Child, Youth and Family Services Act, 2017* provisions**

(4) The following provisions of the *Child, Youth and Family Services Act, 2017* apply with necessary modifications in respect of an inspection conducted under this section:

1. Section 273 (powers on inspection).
2. Section 276 (admissibility of certain documents).
3. Section 59 (inspection with a warrant).
4. Subsections 66 (3) to (6) (offences).

**(12) Section 18 of the Act is repealed and the following substituted:**

### **Licence and records to be delivered**

**18** If a licence is revoked or renewal of it refused, or if a licensee ceases to facilitate intercountry adoptions, the licensee shall,

- (a) promptly deliver the licence to a Director or to the Minister; and
- (b) deliver all the records in the licensee's possession or control that relate to the children to whom services were being provided to a prescribed person or entity within the prescribed time.

**(13)** Subsection 20 (1) of the Act is amended by striking out "\$2,000" and substituting "\$5,000".

**(14)** Subsection 20 (2) of the Act is amended by striking out "\$1,000" and substituting "\$5,000".

**(15)** Subsections 20 (3) and (4) of the Act are amended by striking out "\$2,000" wherever it appears and substituting in each case "\$5,000".

**(16)** Section 22 of the Act is repealed and the following substituted:

*Child, Youth and Family Services Act, 2017, s. 224*

**22** Directors and licensees under this Act are deemed to be licensees for the purposes of section 224 of the *Child, Youth and Family Services Act, 2017* (confidentiality of adoption records).

**(17)** Section 24 of the Act is amended by adding the following clauses:

- (e.1) respecting police record checks for the purposes of this Act, including,
  - (i) defining "police record check",
  - (ii) requiring different classes of persons to provide different types of checks or different types of information as part of a check,
  - (iii) prescribing procedures and practices to be followed when a police record check is required,
  - (iv) for the purposes of subsection 5 (3.1), prescribing other persons who may be required to provide a police record check and prescribing persons and bodies to whom police record checks must be provided, and
  - (v) requiring police record checks to be obtained from jurisdictions outside Ontario in specified circumstances;
- (h.1) prescribing grounds for which the issuance of a licence may be refused for the purposes of clause 9 (c);
- (h.2) prescribing grounds for which a licence may be revoked or the renewal of it refused for the purposes of clause 10 (e);
- (h.3) requiring applicants for licences and their renewal to provide police record checks;

- (j.1) prescribing persons and entities and timing requirements for the purposes of clause 18 (b);

*Jewish Family and Child Service of Metropolitan Toronto Act, 1980*

**19 (1)** The Preamble to the *Jewish Family and Child Service of Metropolitan Toronto Act, 1980* is amended by striking out "the *Child and Family Services Act, 1984*" and substituting "the *Child, Youth and Family Services Act, 2017*".

**(2)** Section 1 of the Act is repealed and the following substituted:

**1** For the purposes of every Act, the Corporation is deemed to be a children's aid society designated under subsection 33 (1) of the *Child, Youth and Family Services Act, 2017* for the territorial jurisdiction in which it operates on the day that subsection comes into force, for all the functions set out in subsection 34 (1) of that Act.

**(3)** Section 2 of the Act is repealed and the following substituted:

~~2~~ Despite section 1, the powers conferred on the Corporation to apprehend and detain children under section 80 of the *Child, Youth and Family Services Act, 2017* shall be exercised only within the City of Toronto.

2 Despite section 1, the powers conferred on the Corporation to bring children to a place of safety under section 80 of the *Child, Youth and Family Services Act, 2017* shall be exercised only within the City of Toronto.

**(4)** Section 3 of the Act is repealed.

**(5)** Section 4 of the Act is amended by striking out "Metropolitan" before "Toronto".

*Long-Term Care Homes Act, 2007*

**20** Subclause 95 (2) (a) (i) of the *Long-Term Care Homes Act, 2007* is repealed and the following substituted:

- (i) the *Child, Youth and Family Services Act, 2017*,

*Ministry of Community and Social Services Act*

**21 Subclause 7 (b) (i) of the *Ministry of Community and Social Services Act* is repealed and the following substituted:**

- (i) who is in extended society care under Part V of the *Child, Youth and Family Services Act, 2017*, or

*Ministry of Correctional Services Act*

**22 Clause 43 (3) (a) of the *Ministry of Correctional Services Act* is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

*Municipal Act, 2001*

**23 (1) Clause (a) of the definition of “local board” in subsection 10 (6) of the *Municipal Act, 2001* is repealed and the following substituted:**

- (a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,

**(2) Clause 216 (3) (a) of the Act is repealed and the following substituted:**

- (a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*;

**(3) Clause (a) of the definition of “local board” in section 223.1 of the Act is repealed and the following substituted:**

- (a) a society as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*,

*Ontario Works Act, 1997*

**24 Clause 10 (e) of the *Ontario Works Act, 1997* is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

*Pay Equity Act*

**25 (1) The Appendix to the Schedule to the *Pay Equity Act* is amended by striking out the heading “Ministry of Community and Social Services” and substituting the following:**

Ministry of Community and Social Services

Ministry of Children and Youth Services

**(2) Clauses 1 (a), (b), (q), (r) and (t) under the heading set out in subsection (1) of this section are repealed and the following substituted:**

- (a) operates a children’s residence under the authority of a licence issued under subsection 251 (3) of the *Child, Youth and Family Services Act, 2017*;
- (b) provides residential care under the authority of a licence issued under subsection 251 (3) of the *Child, Youth and Family Services Act, 2017* unless the provider is a foster parent;
- (c) . . . . .
- (q) provides services for young persons under Part VI of the *Child, Youth and Family Services Act, 2017* or under an agreement with the Ministry of Children and Youth Services;
- (r) provides children’s services funded or purchased by the Ministry of Children and Youth Services or the Ministry of Community and Social Services under the *Child, Youth and Family Services Act, 2017*;
- (s) . . . . .
- (t) provides a service funded under or provided under the authority of a licence issued under the *Child, Youth and Family Services Act, 2017*.

**(3) Paragraph 2 under the heading set out in subsection (1) of this section is repealed and the following substituted:**

- 2. Societies, as defined in the *Child, Youth and Family Services Act, 2017*.

*Pension Benefits Act*

**26 Paragraph 9 of subsection 1 (5) of the *Pension Benefits Act* is amended by striking out “*Child and Family Services Act*” at the end and substituting “*Child, Youth and Family Services Act, 2017*”.**

*Perpetuities Act*

**27 Subsection 17 (2) of the *Perpetuities Act* is repealed and the following substituted:**

**Definition**

**(2) For the purposes of subsection (1),**

“issue” means issue of a person, whether born within or outside marriage, subject to sections 214 and 215 of the *Child, Youth and Family Services Act, 2017*.



***Personal Health Information Protection Act, 2004***

28 (1) Subparagraph 2 ii of subsection 23 (1) of the *Personal Health Information Protection Act, 2004* is amended by striking out “*Child and Family Services Act*” at the end and substituting “*Child, Youth and Family Services Act, 2017*”.

(2) Clause 40 (3) (b) of the Act is amended by striking out “under Part IV of the *Child and Family Services Act*” and substituting “under Part VI of the *Child, Youth and Family Services Act, 2017*”.

(3) Clause 43 (1) (e) of the Act is repealed and the following substituted:

- (e) to the Public Guardian and Trustee, the Children’s Lawyer, a children’s aid society, a residential placement advisory committee established under subsection 62 (1) of the *Child, Youth and Family Services Act, 2017* or a designated custodian under section 220 of that Act so that they can carry out their statutory functions;

***Police Record Checks Reform Act, 2015***

29 (1) Paragraph 8 of subsection 2 (2) of the *Police Record Checks Reform Act, 2015* is repealed and the following substituted:

- 8. A search requested by a children’s aid society for the purpose of performing its functions under subsection 34 (1) of the *Child, Youth and Family Services Act, 2017*.

(2) Item 6 of the Table to section 1 of the Schedule to the Act is amended by striking out “*Child and Family Services Act*” under Column 3 and Column 4 and substituting in each case “*Child, Youth and Family Services Act, 2017*”.

***Private Hospitals Act***

30 Clause (c) of the definition of “private hospital” in section 1 of the *Private Hospitals Act* is repealed and the following substituted:

- (c) a children’s residence licensed under Part IX (Residential Licensing) of the *Child, Youth and Family Services Act, 2017*,

***Provincial Advocate for Children and Youth Act, 2007***

31 (1) Clause 1 (a) of the *Provincial Advocate for Children and Youth Act, 2007* is repealed and the following substituted:

- (a) provide an independent voice for children and youth, including First Nations, Inuit and Métis children and youth and children with special needs, by partnering with them to bring issues forward;

(2) The definitions of “child”, “Child and Family Services Review Board”, “children’s aid society service”, “Director”, “residential licensee”, “service” and “youth” in subsection 2 (1) of the Act are repealed and the following substituted:

“child” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“enfant”)

“Child and Family Services Review Board” means the Child and Family Services Review Board continued under Part XI of the *Child, Youth and Family Services Act, 2017*; (“Commission de révision des services à l’enfance et à la famille”)

“children’s aid society service” means the functions of a children’s aid society listed in subsection 34 (1) of the *Child, Youth and Family Services Act, 2017*; (“service d’une société d’aide à l’enfance”)

“Director” means the Director appointed under subsection 52 (1) of the *Child, Youth and Family Services Act, 2017*; (“directeur”)

“residential licensee” means the holder of a licence issued under Part IX of the *Child, Youth and Family Services Act, 2017*; (“titulaire de permis d’un foyer”)

“service”, for the purposes of clauses 1 (d) and 15 (2) (b), has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*, except it does not include a service described in clause (h) of that definition; (“service”)

“youth” means one or more young persons within the meaning of the *Child, Youth and Family Services Act, 2017*. (“jeune”)

(3) Subsection 2 (2) of the Act is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.

(4) Subsection 3 (3) of the Act is repealed.

(5) Clauses 15 (1) (a) and (c) of the Act are repealed and the following substituted:

- (a) provide advocacy to children and youth who are seeking or receiving services that are provided or funded under the *Child, Youth and Family Services Act, 2017* or provided under the authority of a licence issued under that Act;

- (c) promote the rights under Part II of the *Child, Youth and Family Services Act, 2017* of children in care;

**(6) Clause 15 (4) (a) of the Act is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.**

**(7) Clauses 16 (1) (f), (g), (j), (m) and (o) of the Act are repealed and the following substituted:**

- (f) provide advice and make recommendations to entities, including governments, ministers, agencies and service providers responsible for services,
  - (i) under the *Child, Youth and Family Services Act, 2017*, or
  - (ii) that are provided for in the regulations;
- (g) educate children in care, their families and staff of agencies and service providers about the rights of children in care under Part II of the *Child, Youth and Family Services Act, 2017*;
- (j) provide advocacy to children in care regarding complaints made with respect to rights under Part II of the *Child, Youth and Family Services Act, 2017*;
- (m) meet with children who have undergone emergency admission to a secure treatment program under the *Child, Youth and Family Services Act, 2017* to explain, in language suitable to their understanding, the children’s right to a review of the admission;
- (o) provide information to children and youth and their families on how to access services described in clause 15 (1) (a);

**(8) Paragraphs 3 and 4 of subsection 16.4 (1) of the Act are repealed and the following substituted:**

- 3. Matters that are the subject of licensing inspections or reviews of orders made under paragraph 3 of subsection 98 (1) or clause 113 (1) (c) under the *Child, Youth and Family Services Act, 2017* or the subject of inspections or reviews by the Ministry, where the investigation by the Advocate would, in the opinion of the Director, interfere with the inspection or review.
- 4. Matters that are eligible for resolution by a complaints or review process under this Act or the *Child, Youth and Family Services Act, 2017*, other than the reviews referred to in paragraphs 2 and 3, until after the complaints or review process is completed.

**(9) Subsection 18.1 (3) of the Act is repealed and the following substituted:**

**Duty to report under the *Child, Youth and Family Services Act, 2017***

(3) Nothing in this section affects the duty to report a suspicion under section 122 of the *Child, Youth and Family Services Act, 2017*.

**(10) Subsection 21.1 (2) of the Act is repealed and the following substituted:**

**Prohibition: identifying child**

(2) Despite paragraph 10 of section 20, the Advocate shall not disclose in an investigative report the name of or any identifying information about the child to whom the investigation relates, and nothing in this section limits the prohibition against identifying a child set out in subsection 85 (8) of the *Child, Youth and Family Services Act, 2017*.

***Public Sector Labour Relations Transition Act, 1997***

**32 The *Public Sector Labour Relations Transition Act, 1997* is amended by adding the following section:**

**Children’s aid societies**

**8.1 (1)** This Act applies upon the amalgamation of two or more children’s aid societies.

**Predecessor and successor employers**

(2) For the purposes of this Act, the children’s aid societies that are amalgamated are the predecessor employers and the children’s aid society that exists when the amalgamation takes effect is the successor employer.

**Changeover date**

(3) For the purposes of this Act, the changeover date is the date on which the amalgamation takes effect.

**Definition**

(4) In this section,

“children’s aid society” means a corporation that is a children’s aid society under the *Child, Youth and Family Services Act, 2017*.

*Residential Tenancies Act, 2006*

33 Clause 5 (e) of the *Residential Tenancies Act, 2006* is amended by striking out “*Child and Family Services Act*” at the end and substituting “*Child, Youth and Family Services Act, 2017*”.

*Substitute Decisions Act, 1992*

34 The Schedule to the *Substitute Decisions Act, 1992* is amended by striking out “*Child and Family Services Act*” and substituting “*Child, Youth and Family Services Act, 2017*”.

*Vital Statistics Act*

35 (1) Clause 10 (2) (b) of the *Vital Statistics Act* is repealed and the following substituted:

(b) every consent required by the *Child, Youth and Family Services Act, 2017* for the child’s adoption has been given or dispensed with; or

(2) Subsection 28 (1) of the Act is amended by striking out “subsection 162 (3) of the *Child and Family Services Act*” and substituting “subsection 219 (3) of the *Child, Youth and Family Services Act, 2017*”.

(3) Subsections 30 (1) and (2) of the Act are amended by striking out “*Child and Family Services Act*” wherever it appears and substituting in each case “*Child, Youth and Family Services Act, 2017*”.

*Workplace Safety and Insurance Act, 1997*

36 The definitions of “place of secure custody”, “place of secure temporary detention” and “young person” in subsection 14 (1) of the *Workplace Safety and Insurance Act, 1997* are repealed and the following substituted:

“place of secure custody” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“lieu de garde en milieu fermé”)

“place of secure temporary detention” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“lieu de détention provisoire en milieu fermé”)

“young person” has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*; (“adolescent”)

**Commencement**

37 (1) Subject to subsections (2), (3) and (4), this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Subsection 4 (1) comes into force on the first day that subsection 1 (1) of the *All Families are Equal Act (Parentage and Related Registrations Statute Law Amendment), 2016* and section 327 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* are both in force.

(3) Subsection 29 (1) comes into force on the first day that subsection 2 (2) of the *Police Record Checks Reform Act, 2015* and subsection 34 (1) of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* are both in force.

(4) Subsection 29 (2) comes into force on the first day that item 6 of the Table to section 1 of the Schedule to the *Police Record Checks Reform Act, 2015* and section 327 of Schedule 1 to the *Supporting Children, Youth and Families Act, 2017* are both in force.



- (2) Le paragraphe 28 (1) de la Loi est modifié par remplacement de «du paragraphe 162 (3) de la Loi sur les services à l'enfance et à la famille» par «du paragraphe 219 (3) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».
- (3) Les paragraphes 30 (1) et (2) de la Loi sont modifiés par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille» partout où figure cette expression.
- Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail*
- 36 Les définitions de «adolescent», «lieu de détention provisoire en milieu fermé» et «lieu de garde en milieu fermé» au paragraphe 14 (1) de la Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail sont abrogées et remplacées par ce qui suit :
- «adolescent» S'entend au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.
- «lieu de détention provisoire en milieu fermé» S'entend au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.
- «lieu de garde en milieu fermé» S'entend au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.
- Entrée en vigueur
- 37 (1) Sous réserve des paragraphes (2), (3) et (4), la présente annexe entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.
- (2) Le paragraphe 4 (1) entre en vigueur le premier jour où le paragraphe 1 (1) de la Loi de 2016 sur l'égalité de toutes les familles (modifiant des lois en ce qui concerne la filiation et les enregistrements connexes) et l'article 327 de l'annexe 1 de la Loi de 2017 sur le soutien à l'enfance, à la jeunesse et à la famille sont tous deux en vigueur.
- (3) Le paragraphe 29 (1) entre en vigueur le premier jour où le paragraphe 2 (2) de la Loi de 2015 sur la réforme des vérifications de dossiers de police et le paragraphe 34 (1) de l'annexe 1 de la Loi de 2017 sur le soutien à l'enfance, à la jeunesse et à la famille sont tous deux en vigueur.
- (4) Le paragraphe 29 (2) entre en vigueur le premier jour où le point 6 du tableau de l'article 1 de l'annexe de la Loi de 2015 sur la réforme des vérifications de dossiers de police et l'article 327 de l'annexe 1 de la Loi de 2017 sur le soutien à l'enfance, à la jeunesse et à la famille sont tous deux en vigueur.

m) rencontrer les enfants qui ont été admis d'urgence à un programme de traitement en milieu fermé en application de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille afin de leur expliquer, dans un langage adapté à leur niveau de compréhension, leur droit de faire réviser leur admission;

o) fournir aux enfants et aux jeunes et à leur famille des renseignements sur la façon d'obtenir les services visés à l'alinéa 15 (1) a);

(8) Les dispositions 3 et 4 du paragraphe 16.4 (1) de la Loi sont abrogées et remplacées par ce qui suit :

3. Les questions qui font l'objet soit d'inspections en matière de délivrance de permis ou de révisions des ordonnances rendues en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille, soit d'inspections ou de révisions par le ministre, si le directeur est d'avis qu'une enquête par l'intervenant nuirait à ces inspections ou révisions.

4. Les questions pouvant être résolues par le biais d'un processus de règlement des plaintes ou de révision prévu par la présente loi ou par la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille, à l'exception des révisions visées aux dispositions 2 et 3 tant que le processus prévu n'a pas pris fin.

(9) Le paragraphe 18.1 (3) de la Loi est abrogé et remplacé par ce qui suit :

**Obligation de déclaration prévue par la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille**

(3) Le présent article n'a aucune incidence sur l'obligation de déclarer ses soupçons prévue à l'article 122 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

(10) Le paragraphe 21.1 (2) de la Loi est abrogé et remplacé par ce qui suit :

**Interdiction : identification d'un enfant**

(2) Malgré la disposition 10 de l'article 20, l'intervenant ne doit pas divulguer dans son rapport d'enquête le nom de l'enfant visé par l'enquête ou des renseignements identificateurs se rapportant à cet enfant. Le présent article n'a pas pour effet de restreindre l'interdiction d'identifier un enfant énoncée au paragraphe 85 (8) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

**Loi de 1997 sur les relations de travail liées à la transition dans le secteur public**

**32 La Loi de 1997 sur les relations de travail liées à la transition dans le secteur public est modifiée par adjonction de l'article suivant :**

**Sociétés d'aide à l'enfance**

8.1 (1) La présente loi s'applique en cas de fusion de deux sociétés d'aide à l'enfance ou plus.

**Employeurs précédents et employeur qui succède**

(2) Pour l'application de la présente loi, les sociétés d'aide à l'enfance qui sont fusionnées sont les employeurs précédents et la société d'aide à l'enfance issue de la fusion est l'employeur qui succède.

**Date du changement**

(3) Pour l'application de la présente loi, la date du changement est la date à laquelle la fusion prend effet.

**Définition**

(4) La définition qui suit s'applique au présent article.

«société d'aide à l'enfance» Personne morale qui est une société d'aide à l'enfance sous le régime de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

**Loi de 2006 sur la location à usage d'habitation**

33 L'alinéa 5 e) de la Loi de 2006 sur la location à usage d'habitation est modifié par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille» à la fin de l'alinéa.

**Loi de 1992 sur la prise de décisions au nom d'autrui**

34 L'annexe de la Loi de 1992 sur la prise de décisions au nom d'autrui est modifiée par remplacement de «Services à l'enfance et à la famille, Loi sur les» par «Services à l'enfance, à la jeunesse et à la famille, Loi de 2017 sur les».

**Loi sur les statistiques de l'état civil**

35 (1) L'alinéa 10 (2) b) de la Loi sur les statistiques de l'état civil est abrogé et remplacé par ce qui suit :

b) le consentement exigé en application de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille pour l'adoption de l'enfant a été donné ou n'a pas été exigé;

- (c) un foyer pour enfants détenant un permis délivré en vertu de la partie IX (Permis d'établissement) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;
- 31 (1) L'alinéa 1 a) de la Loi de 2007 sur l'intervenant provincial en faveur des enfants et des jeunes est abrogé et remplacé par ce qui suit :
- a) donner une voix indépendante aux enfants et aux jeunes, y compris les enfants et les jeunes inuits, métis et de Premières Nations et les enfants ayant des besoins particuliers, en s'associant avec eux pour mettre en avant des questions qui les touchent;

(2) Les définitions de «Commission de révision des services à l'enfance et à la famille», «directeur», «enfant», «jeune», «service», «service d'aide à l'enfance» et «titulaire de permis d'un foyer» au paragraphe 2 (1) de la Loi de 2007 sur l'intervenant provincial en faveur des enfants et des jeunes sont abrogées et remplacées par ce qui suit :

«Commission de révision des services à l'enfance et à la famille» La Commission de révision des services à l'enfance et à la famille prorogée en application de la partie XI de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

(«Child and Family Services Review Board»)

«directeur» Le directeur nommé en vertu du paragraphe 52 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille. («Director»)

«enfant» S'entend au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille. («child»)

«jeune» Adolescent au sens de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille. («youth»)

«service» Pour l'application des alinéas 1 d) et 15 (2) b), s'entend au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille, à l'exclusion d'un service visé à l'alinéa h) de cette définition.

(«service»)

«service d'une société d'aide à l'enfance» Les fonctions d'une société d'aide à l'enfance énumérées au paragraphe 34 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille. («children's aid society service»)

«titulaire de permis d'un foyer» Le titulaire d'un permis délivré en vertu de la partie IX de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille. («residential licensee»)

(3) Le paragraphe 2 (2) de la Loi est modifié par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

(4) Le paragraphe 3 (3) de la Loi est abrogé.

(5) Les alinéas 15 (1) a) et c) de la Loi sont abrogés et remplacés par ce qui suit :

a) intervenir en faveur des enfants et des jeunes qui sollicitent ou reçoivent des services fournis ou financés en vertu de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille ou fournis en vertu d'un permis à cet effet délivré en vertu de cette loi;

c) promouvoir les droits que confère aux enfants recevant des soins la partie II de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

(6) L'alinéa 15 (4) a) de la Loi est modifié par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

(7) Les alinéas 16 (1) f), g), j), m) et o) de la Loi sont abrogés et remplacés par ce qui suit :

f) fournir des conseils et faire des recommandations aux gouvernements, ministres, agences, fournisseurs de services et autres entités chargés des services qui sont, selon le cas :

(i) prévus par la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille,

(ii) prévus par les règlements;

g) informer les enfants recevant des soins, leur famille et le personnel des agences et des fournisseurs de services des droits que confère à ces enfants la partie II de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

j) intervenir en faveur des enfants recevant des soins en ce qui concerne les plaintes présentées à l'égard des droits que confère la partie II de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;



- a) font fonctionner un foyer pour enfants aux termes d'un permis à cet effet délivré en vertu du paragraphe 251 (3) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;
- b) fournissent des soins en établissement aux termes d'un permis à cet effet délivré en vertu du paragraphe 251 (3) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille d'accueil;

- q) fournissent des services aux adolescents en vertu de la partie VI de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille ou aux termes d'une entente conclue avec le ministère des Services à l'enfance et à la jeunesse;
- r) fournissent des services à l'enfance financés ou achetés par le ministère des Services à l'enfance et à la jeunesse ou le ministère des Services sociaux et communautaires en vertu de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

- (1) fournissent un service financé ou fourni aux termes d'un permis à cet effet délivré sous le régime de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

(3) La disposition 2 sous l'intertitre énoncé au paragraphe (1) du présent article est abrogée et remplacée par ce qui suit :

2. Les sociétés, au sens de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

#### *Loi sur les régimes de retraite*

26 La disposition 9 du paragraphe 1 (5) de la Loi sur les régimes de retraite est modifiée par remplacement de «Loi sur les services à l'enfance, à la jeunesse et à la famille» à la fin de la disposition.

#### *Loi sur les dévolutions perpétuelles*

27 Le paragraphe 17 (2) de la Loi sur les dévolutions perpétuelles est abrogé et remplacé par ce qui suit :

#### **Définition**

- (2) La définition qui suit s'applique au paragraphe (1).

«postérité» S'entend de la postérité d'une personne, qu'elle soit née dans le cadre ou hors du mariage, sous réserve des articles 214 et 215 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

#### *Loi de 2004 sur la protection des renseignements personnels sur la santé*

28 (1) La sous-disposition 2 ii du paragraphe 23 (1) de la Loi de 2004 sur la protection des renseignements personnels sur la santé est modifiée par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille» à la fin de la sous-disposition.

(2) L'alinéa 40 (3) b) de la Loi est modifiée par remplacement de «en application de la partie IV de la Loi sur les services à l'enfance et à la famille» par «en application de la partie VI de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

(3) L'alinéa 43 (1) e) de la Loi est abrogé et remplacé par ce qui suit :

- e) au tuteur et curateur public, à l'avocat des enfants, à une société d'aide à l'enfance, à un comité consultatif sur les placements en établissement constitué en vertu du paragraphe 62 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille ou à un dépositaire désigné visé à l'article 220 de cette loi, pour leur permettre d'exercer les fonctions que leur attribue la loi;

#### *Loi de 2015 sur la réforme des vérifications de dossiers de police*

29 (1) La disposition 8 du paragraphe 2 (2) de la Loi de 2015 sur la réforme des vérifications de dossiers de police est abrogée et remplacée par ce qui suit :

8. Une recherche demandée par une société d'aide à l'enfance en vue d'exercer les fonctions visées au paragraphe 34 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

(2) Le point 6 du tableau de l'annexe de la Loi est modifié par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille» dans la colonne 3 et la colonne 4.

#### *Loi sur les hôpitaux privés*

30 L'alinéa c) de la définition de «hôpital privé» à l'article 1 de la Loi sur les hôpitaux privés est abrogé et remplacé par ce qui suit :

h.3) exiger des auteurs de demande de permis ou de renouvellement de permis qu'ils fournissent des vérifications de dossiers de police;

j.1) prescrire des personnes et entités ainsi que des délais pour l'application de l'alinéa 18 b);

*Loi intitulée Jewish Family and Child Service of Metropolitan Toronto Act, 1980*

19 (1) Le préambule de la loi intitulée *Jewish Family and Child Service of Metropolitan Toronto Act, 1980* est modifié par remplacement de «the Child and Family Services Act, 1984» par «the Child, Youth and Family Services Act, 2017».

(2) L'article 1 de la Loi est abrogé et remplacé par ce qui suit :

1 For the purposes of every Act, the Corporation is deemed to be a children's aid society designated under subsection 33 (1) of the *Child, Youth and Family Services Act, 2017* for the territorial jurisdiction in which it operates on the day that subsection comes into force, for all the functions set out in subsection 34 (1) of that Act.

(3) L'article 2 de la Loi est abrogé et remplacé par ce qui suit :

2 Despite section 1, the powers conferred on the Corporation to apprehend and detain children under section 80 of the *Child, Youth and Family Services Act, 2017* shall be exercised only within the City of Toronto.

2 Despite section 1, the powers conferred on the Corporation to bring children to a place of safety under section 80 of the *Child, Youth and Family Services Act, 2017* shall be exercised only within the City of Toronto.

(4) L'article 3 de la Loi est abrogé.

(5) L'article 4 de la Loi est modifié par suppression de «Metropolitan» avant «Toronto».

*Loi de 2007 sur les foyers de soins de longue durée*

20 Le sous-alinéa 95 (2) a) (i) de la Loi de 2007 sur les foyers de soins de longue durée est abrogé et remplacé par ce qui suit :

(i) la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille,

*Loi sur le ministère des Services sociaux et communautaires*

21 Le sous-alinéa 7 b) (i) de la Loi sur le ministère des Services sociaux et communautaires est abrogé et remplacé par ce qui suit :

(i) soit qui est confié aux soins d'une société de façon prolongée en vertu de la partie V de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille,

*Loi sur le ministère des Services correctionnels*

22 L'alinéa 43 (3) a) de la Loi sur le ministère des Services correctionnels est modifié par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

*Loi de 2001 sur les municipalités*

23 (1) L'alinéa a) de la définition de «conseil local» au paragraphe 10 (6) de la Loi de 2001 sur les municipalités est abrogé et remplacé par ce qui suit :

a) une société au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

(2) L'alinéa 216 (3) a) de la Loi est abrogé et remplacé par ce qui suit :

a) une société au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

(3) L'alinéa a) de la définition de «conseil local» à l'article 223.1 de la Loi est abrogé et remplacé par ce qui suit :

a) une société au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

*Loi de 1997 sur le programme Ontario au travail*

24 L'alinéa 10 e) de la Loi de 1997 sur le programme Ontario au travail est modifié par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

*Loi sur l'équité salariale*

25 (1) L'appendice de l'annexe de la Loi sur l'équité salariale est modifié par remplacement de l'intertitre «Ministère des Services sociaux et communautaires» par ce qui suit :

Ministère des Services sociaux et communautaires

Ministère des Services à l'enfance et à la jeunesse

(2) Les alinéas 1 a), b), q), r) et t) sous l'intertitre énoncé au paragraphe (1) du présent article sont abrogés et remplacés par ce qui suit :

**Inspections par le directeur**

17 (1) Afin de s'assurer de la conformité à la présente loi et aux règlements, le directeur ou la personne munie d'une autorisation écrite du directeur peut, sans mandat ni préavis, pénétrer à toute heure raisonnable dans les locaux d'un titulaire de permis pour y effectuer une inspection.

**Restriction : logement**

(2) Le pouvoir de pénétrer dans un local visé au paragraphe (1) et de l'inspecter ne doit pas être exercé dans une pièce ou un endroit qui sert effectivement de logement, sauf si l'occupant y consent.

**Pièces d'identité**

(3) Le directeur ou la personne munie d'une autorisation écrite du directeur qui effectue une inspection présente, sur demande, les pièces d'identité suffisantes.

**Application des dispositions de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille**

(4) Les dispositions suivantes de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille s'appliquent, avec les adaptations nécessaires, à l'égard d'une inspection effectuée en vertu du présent article :

1. L'article 273 (pouvoirs de l'inspecteur).
2. L'article 276 (admissibilité de certains documents).
3. L'article 59 (inspection avec mandat).
4. Les paragraphes 66 (3) à (6) (infractions).

**(12) L'article 18 de la Loi est abrogé et remplacé par ce qui suit :**

**Remise du permis et des dossiers**

18 En cas de révocation ou de refus de renouvellement de son permis, ou s'il cesse de faciliter des adoptions internationales, le titulaire de permis :

- a) remet promptement son permis au directeur ou au ministre;
  - b) remet à une personne ou entité prescrite, dans le délai prescrit, tous les dossiers qui se trouvent en sa possession ou sous son contrôle et qui se rapportent aux enfants à qui des services étaient fournis.
- (13) Le paragraphe 20 (1) de la Loi est modifié par remplacement de « 2 000 \$ » par « 5 000 \$ ».
- (14) Le paragraphe 20 (2) de la Loi est modifié par remplacement de « 1 000 \$ » par « 5 000 \$ ».
- (15) Les paragraphes 20 (3) et (4) de la Loi sont modifiés par remplacement de « 2 000 \$ » par « 5 000 \$ » partout où figure cette somme.

**(16) L'article 22 de la Loi est abrogé et remplacé par ce qui suit :**

**Article 224 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille**

22 Les directeurs et les titulaires de permis visés par la présente loi sont réputés être des titulaires de permis pour l'application de l'article 224 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille (caractère confidentiel des renseignements sur les adoptions).

**(17) L'article 24 de la Loi est modifié par adjonction des alinéas suivants :**

- e.1) traiter des vérifications de dossiers de police pour l'application de la présente loi, notamment :
  - (i) définir l'expression « vérification de dossier de police »;
  - (ii) exiger que différentes catégories de personnes fournissent différents types de vérifications de dossiers de police ou différents types de renseignements dans le cadre d'une vérification;
  - (iii) prescrire la marche à suivre lorsqu'une vérification de dossier de police est exigée;
  - (iv) pour l'application du paragraphe 5 (3.1), prescrire les autres personnes qui peuvent être tenues de fournir une vérification de dossier de police ainsi que les personnes et organismes à qui les vérifications doivent être fournies;
  - (v) exiger l'obtention de vérifications de dossiers de police auprès d'autorités législatives hors de l'Ontario dans des circonstances déterminées;

h.1) prescrire des motifs justifiant le refus de délivrer un permis pour l'application de l'alinéa 9 c);

h.2) prescrire des motifs justifiant la révocation ou le refus de renouveler un permis pour l'application de l'alinéa 10 e);



(2) L'article 5 de la Loi est modifié par adjonction du paragraphe suivant :

#### Vérification de dossier de police

(3.1) La personne qui fait l'objet de l'étude du milieu familial et les autres personnes prescrites doivent fournir une vérification de dossier de police les concernant à la personne prescrite ou à l'organisme prescrite conformément aux règlements.

(3) L'article 8.1 de la Loi est modifié par remplacement de «Au cours de la période de validité d'un permis» par «À tout moment pendant la durée d'un permis» au début de l'article.

#### Conditions du permis

8.1 (1) Lorsqu'il délivre ou renouvelle un permis, ou à tout autre moment, le directeur peut assortir le permis des conditions qu'il juge appropriées.

#### Modification des conditions

(2) Le directeur peut, à tout moment, modifier les conditions du permis.

#### Avis

(3) S'il assortit le permis de conditions ou qu'il modifie des conditions, le directeur en avise le titulaire de permis par écrit.

#### Contenu de l'avis

(4) L'avis énonce les motifs de l'imposition de conditions ou de la modification de conditions et indique que le titulaire de permis a droit à une audience devant le Tribunal s'il en demande une conformément à l'article 12.

#### Prise d'effet des conditions sur avis

(5) L'imposition ou la modification de conditions prend effet dès que le titulaire de permis reçoit l'avis. Une demande d'audience devant le Tribunal n'a pas pour effet de surseoir à l'imposition ou à la modification des conditions.

#### Titulaire du permis : obligation de conformité aux conditions

(6) Le titulaire de permis doit se conformer aux conditions dont est assorti le permis.

(4) L'article 9 de la Loi est modifié par insertion de «proposer de» avant «refuser» dans le passage qui précède l'alinéa a).

(5) L'article 9 de la Loi est modifié par adjonction de l'alinéa suivant :

c) il existe un motif prescrit comme motif justifiant le refus de délivrer un permis.

(6) L'article 10 de la Loi est modifié par remplacement de «peut révoquer un permis ou de refuser de le renouveler» par «peut proposer de révoquer un permis ou de refuser de le renouveler» dans le passage qui précède l'alinéa a).

(7) L'article 10 de la Loi est modifié par adjonction de l'alinéa suivant :

e) il existe un motif prescrit comme motif justifiant la révocation du permis ou le refus de le renouveler.

(8) L'alinéa 13 (3) b) de la Loi est abrogé et remplacé par ce qui suit :

b) soit jusqu'au moment où expire le délai prévu pour demander une audience, si le titulaire du permis reçoit signification d'un avis de l'intention du directeur de révoquer le permis ou de refuser de le renouveler, ou, si une audience est demandée, jusqu'au jour où le Tribunal rend sa décision.

(9) Le paragraphe 14 (1) de la Loi est abrogé et remplacé par ce qui suit :

#### Suspension du permis

(1) Le directeur peut, en faisant signifier un avis au titulaire d'un permis, suspendre le permis s'il est d'avis que la manière dont les adoptions internationales sont facilitées constitue un danger immédiat pour la santé, la sécurité ou le bien-être des enfants.

(10) Le paragraphe 14 (3) de la Loi est abrogé et remplacé par ce qui suit :

#### Entrée en vigueur de la suspension

(3) La suspension entre en vigueur le jour où le titulaire du permis reçoit l'avis. La demande d'audience devant le Tribunal n'a pas pour effet de surseoir à l'exécution de la suspension.

(11) L'article 17 de la Loi est abrogé et remplacé par ce qui suit :

(2) L'enfant qui est confié aux soins ou à la surveillance d'une société d'aide à l'enfance, qui bénéficie de services de protection de l'enfance fournis par une telle société ou qui réside dans un foyer pour enfants ou dans une famille d'accueil au sens de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille et qui satisfait par ailleurs aux conditions requises pour être admis à l'école secondaire est admis gratuitement à une école secondaire qui relève du conseil du district d'écoles secondaires ou de la zone d'écoles séparées, selon le cas, dans laquelle il réside.

**Loi sur l'accès à l'information et la protection de la vie privée**

14 (1) Les dispositions 2, 3 et 4 du paragraphe 65 (8) de la Loi sur l'accès à l'information et la protection de la vie privée sont abrogées et remplacées par ce qui suit :

2. Les veto sur la divulgation enregistrés en application de l'article 48.5 de la Loi sur les statistiques de l'état civil.

3. Les renseignements et les documents compris dans les dossiers qui sont descellés en vertu de l'article 48.6 de cette loi.

(2) La disposition 2 du paragraphe 67 (2) de la Loi est abrogée et remplacée par ce qui suit :

2. Les paragraphes 85 (8), (9) et (10), 95 (9) et (10), 127 (6), 130 (6), 131 (11) et 160 (6), et l'article 224 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

(3) La disposition 2 du paragraphe 67 (2) de la Loi est abrogée et remplacée par ce qui suit :

2. Les paragraphes 85 (8), (9) et (10), 95 (9) et (10), 127 (6) et 160 (6), et l'article 224 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

(4) Les dispositions 4, 7 et 7.0.1 du paragraphe 67 (2) de la Loi sont abrogées et remplacées par ce qui suit :

4. L'article 12 de la Loi sur les contrats à terme sur marchandises.

7. Le paragraphe 119 (1) de la Loi de 1995 sur les relations de travail.

7.0.1. Les articles 89 et 90 et le paragraphe 92 (6) de la Loi de 1998 sur les services d'aide juridique.

**Loi sur les services en français**

15 L'alinéa e) de la définition de «organisme gouvernemental» à l'article 1 de la Loi sur les services en français est abrogé et remplacé par ce qui suit :

e) un fournisseur de services au sens de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille ou un conseil d'administration au sens de la Loi sur les conseils d'administration de district des services sociaux qui sont désignés par les règlements en tant qu'organismes offrant des services publics.

**Loi de 1996 sur le consentement aux soins de santé**

16 (1) Le paragraphe 76 (2) de la Loi de 1996 sur le consentement aux soins de santé est modifié par remplacement de «des paragraphes 183 (2) à (6) de la Loi sur les services à l'enfance et à la famille (non-divulgué)» par «des paragraphes 290 (2) à (6) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille (non-divulgué)» à la fin du paragraphe.

(2) Le paragraphe 81 (3) de la Loi est modifié par remplacement de «de l'article 124 de la Loi sur les services à l'enfance et à la famille» par «de l'article 168 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

**Loi sur la protection et la promotion de la santé**

17 (1) Les alinéas b) et c) de la définition de «établissement» au paragraphe 21 (1) de la Loi sur la protection et la promotion de la santé sont abrogés et remplacés par ce qui suit :

b) local qui avait été agréé en vertu du paragraphe 9 (1) de la partie I (Services adaptables) de la Loi sur les services à l'enfance et à la famille, dans sa version antérieure à son abrogation;

c) «foyer pour enfants» au sens de la partie IX (Permis d'établissement) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

(2) L'alinéa 39 (2) e) de la Loi est abrogé et remplacé par ce qui suit :

e) pour empêcher la déclaration de renseignements aux termes de l'article 122 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille à l'égard d'un enfant qui a ou peut avoir besoin de protection.

**Loi de 1998 sur l'adoption internationale**

18 (1) Le paragraphe 1 (1) de la Loi de 1998 sur l'adoption internationale est modifié par adjonction de la définition suivante :

«prescrit» Prescrit par les règlements. («prescribed»)

la personne responsable du programme donne immédiatement avis du décès à un coroner, lequel tient une enquête sur la cause du décès.

(3) L'article 22.1 de la Loi est abrogé et remplacé par ce qui suit :

#### Enquête obligatoire

22.1 Lorsqu'il apprend qu'un enfant est décédé dans les circonstances visées aux alinéas 125 a), b) et c) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille, un coroner tient une enquête en application de la présente loi sur le décès de l'enfant.

#### Loi sur l'imposition des sociétés

9 L'alinéa i) de la définition de «membre de sa famille» au paragraphe 1 (2) de la Loi sur l'imposition des sociétés est modifiée par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

#### Loi sur les tribunaux judiciaires

10 (1) La disposition 1 de l'annexe de l'article 21.8 de la Loi sur les tribunaux judiciaires est modifiée par remplacement de «Loi sur les services à l'enfance et à la famille, parties V, VII et VIII» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille, parties V, VII et VIII».

(2) Le paragraphe 21.12 (1) de la Loi est abrogé et remplacé par ce qui suit :

#### Exécution des ordonnances

(1) Un juge qui préside la Cour de la famille est réputé un juge de la Cour de justice de l'Ontario pour les besoins des poursuites intentées en vertu de la partie V (Protection de l'enfance) et de la partie VIII (Adoption et délivrance de permis relatifs à l'adoption) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille, de la Loi portant réforme du droit de l'enfance, de la Loi sur le droit de la famille et de la Loi de 1996 sur les obligations familiales et l'exécution des arrêts d'aliments.

(3) Le paragraphe 38 (2) de la Loi est modifié par remplacement de «Loi sur les services à l'enfance et à la famille» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

#### Loi de 1993 sur la négociation collective des employés de la Couronne

11 L'alinéa a) de la définition de «établissement» au paragraphe 7 (5) de la Loi de 1993 sur la négociation collective des employés de la Couronne est abrogé et remplacé par ce qui suit :

a) des locaux où le ministre fournit des services conformément à la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

#### Loi de 2007 sur les éducatrices et les éducateurs de la petite enfance

12 Le paragraphe 32.1 (1) de la Loi de 2007 sur les éducatrices et les éducateurs de la petite enfance est abrogé et remplacé par ce qui suit :

#### Plainte : rapport sur un enfant ayant besoin de protection

(1) Le présent article s'applique à l'égard d'une plainte si le registraire a des motifs raisonnables de croire que le plaignant ou toute autre personne devait vraisemblablement faire un rapport en application de l'article 122 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille relativement à la conduite ou aux actes du membre qui font l'objet de la plainte.

#### Loi sur l'éducation

13 (1) L'alinéa 45 (1) b) de la Loi sur l'éducation est abrogé et remplacé par ce qui suit :

b) il met la personne en pension dans une résidence qui n'est pas un foyer pour enfants au sens de la partie IX (Permis d'établissement) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille,

(2) L'article 47 de la Loi est abrogé et remplacé par ce qui suit :

#### Enfant confié aux soins ou à la surveillance d'une société

#### École élémentaire

47 (1) L'enfant qui est confié aux soins ou à la surveillance d'une société d'aide à l'enfance, qui bénéficie de services de protection de l'enfance fournis par une telle société ou qui réside dans un foyer pour enfants ou dans une famille d'accueil au sens de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille et qui satisfait par ailleurs aux conditions requises pour être admis à l'école élémentaire est admis gratuitement à une école élémentaire qui relève du conseil de la circonscription scolaire ou de la zone d'écoles séparées, selon le cas, dans laquelle il réside.



**Exception**

(1.1) Le paragraphe (1) ne s'applique pas à une requête présentée en vertu de la présente partie qui porte sur le droit de visite ou la garde d'un enfant si ce dernier fait l'objet d'une demande, d'une requête ou d'une ordonnance prévue par la partie V de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille, sauf si la requête présentée en vertu de la présente partie porte sur l'une ou l'autre des ordonnances suivantes :

- a) une ordonnance rendue à l'égard de cet enfant en vertu du paragraphe 99 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;
- b) une ordonnance visée au paragraphe 99 (3) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille qui a été rendue en même temps qu'une ordonnance visée au paragraphe 99 (1) de cette loi;
- c) une ordonnance de visite rendue à l'égard de cet enfant en vertu de l'article 101 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille en même temps qu'une ordonnance visée au paragraphe 99 (1) de cette loi.

**Exception**

(2) Si une requête est présentée en vertu de l'article 21 à l'égard d'un enfant qui fait l'objet d'une ordonnance rendue aux termes de l'article 99 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille, le tribunal traite la requête comme s'il s'agissait d'une requête en modification d'une ordonnance rendue aux termes du présent article.

**Idem**

(3) S'il a été rendu une ordonnance accordant le droit de visiter un enfant aux termes de la partie V de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille en même temps qu'une ordonnance de garde de l'enfant a été rendue aux termes de l'article 99 de cette loi, le tribunal traite la requête présentée en vertu de l'article 21 de la présente loi relative au «lieu de garde» L'ieu de garde en milieu ouvert ou lieu de garde en milieu fermé au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille. («youth custody facility»)

**Loi de 2006 sur la cité de Toronto**

6 (1) L'alinéa a) de la définition de «conseil local (définition restreinte)» au paragraphe 8 (6) de la Loi de 2006 sur la cité de Toronto est abrogé et remplacé par ce qui suit :

a) une société au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

(2) L'alinéa 145 (3) a) de la Loi est abrogé et remplacé par ce qui suit :

a) une société au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

(3) L'alinéa a) de la définition de «conseil local (définition restreinte)» à l'article 156 de la Loi est abrogé et remplacé par ce qui suit :

a) une société au sens du paragraphe 2 (1) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

**Loi sur l'indemnisation des victimes d'actes criminels**

7 La définition de «enfant» à l'article 1 de la Loi sur l'indemnisation des victimes d'actes criminels est modifiée par remplacement de «des articles 158 et 159 de la Loi sur les services à l'enfance et à la famille» par «des articles 214 et 215 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

**Loi sur les coroners**

8 (1) L'alinéa 10 (2) b) de la Loi sur les coroners est abrogé et remplacé par ce qui suit :

b) un foyer pour enfants au sens de la partie IX (Permis d'établissement) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille ou des locaux qui avaient été agréés en vertu du paragraphe 9 (1) de la partie I (Services adaptables) de la Loi sur les services à l'enfance et à la famille, dans sa version antérieure à son abrogation;

(2) Le paragraphe 10 (4.8) de la Loi est abrogé et remplacé par ce qui suit :

Décès pendant la contention dans un programme de traitement en milieu fermé

(4.8) Si une personne décède pendant qu'elle est maîtrisée et pendant qu'elle est placée ou admise dans un programme de traitement en milieu fermé au sens de la partie VII de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille,

## ANNEXE 4 MODIFICATIONS D'AUTRES LOIS

### Loi sur l'évaluation foncière

1 La disposition 13 du paragraphe 3 (1) de la Loi sur l'évaluation foncière est modifiée par remplacement de «Loi sur les services à l'enfance et à la jeunesse» par «Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

### Loi de 2010 sur la responsabilisation du secteur parapublic

2 L'alinéa d) de la définition de «organisme désigné du secteur parapublic» au paragraphe 1 (1) de la Loi de 2010 sur la responsabilisation du secteur parapublic est abrogé et remplacé par ce qui suit :

(d) les agences désignées comme sociétés d'aide à l'enfance en application du paragraphe 33 (1) de la partie III de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille;

### Loi de 2014 sur la garde d'enfants et la petite enfance

3 (1) Le paragraphe 18 (4) de la Loi de 2014 sur la garde d'enfants et la petite enfance est abrogé et remplacé par ce qui suit :

Obligation de déclaration prévue par la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille

(4) Le présent article n'a aucune incidence sur l'obligation de déclarer ses soupçons prévue à l'article 122 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

(2) Le paragraphe 23 (10) de la Loi est abrogé et remplacé par ce qui suit :

### Application de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille

(10) Les articles 263 et 264 de la partie IX de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille s'appliquent, avec les adaptations nécessaires, aux instances introduites devant le Tribunal, aux pouvoirs de celui-ci et aux appels de ses ordonnances.

### Loi portant réforme du droit de l'enfance

4 (1) L'alinéa 4 (2) b) de la Loi portant réforme du droit de l'enfance est modifié par remplacement de «l'article 158 ou 159 de la Loi sur les services à l'enfance et à la famille» par «l'article 214 ou 215 de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille».

(2) L'alinéa 21 (2) b) de la Loi est abrogé et remplacé par ce qui suit :

b) des renseignements sur la participation actuelle ou antérieure de la personne dans des instances en droit de la famille, y compris les instances visées à la partie V de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille (Protection de l'enfance), ou dans des instances criminelles;

(3) Le paragraphe 21.2 (1) de la Loi est abrogé et remplacé par ce qui suit :

Recherche dans les dossiers de la société d'aide à l'enfance : personne qui n'est pas un parent

### Définition

(1) La définition qui suit s'applique au présent article.

«société» Agence désignée comme société d'aide à l'enfance en vertu de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille.

(4) Le paragraphe 21.2 (9) de la Loi est abrogé et remplacé par ce qui suit :

### Interprétation

(9) Aucune mesure prise conformément au présent article ne constitue la publication de renseignements ni le fait de les rendre publics pour l'application du paragraphe 85 (8) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille ou d'une ordonnance visée à l'alinéa 70 (1) b) de la présente loi.

(5) Le paragraphe 21.3 (6) de la Loi est abrogé et remplacé par ce qui suit :

### Interprétation

(6) Aucune mesure prise conformément au présent article ne constitue la publication de renseignements ni le fait de les rendre publics pour l'application du paragraphe 85 (8) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille ou d'une ordonnance visée à l'alinéa 70 (1) b) de la présente loi.

(6) Le paragraphe 26 (1.1) de la Loi est abrogé et remplacé par ce qui suit :

f) changer le prénom et le nom de famille de l'adopté et lui donner un nom unique établi conformément à sa culture traditionnelle ou à celle du ou des requérants si le registraire général de l'état civil au sens de la Loi sur les statistiques de l'état civil approuve le nom unique.

#### Idem

- (1.1) Le tribunal ne doit pas faire le changement visé au paragraphe (1), sauf si, à la fois :
- a) il est dans l'intérêt véritable de l'enfant de le faire, si l'adopté est un enfant;
  - b) l'adopté consent au changement, s'il a 12 ans ou plus.

10 L'alinéa a) de la définition de «agence sans but lucratif» au paragraphe 226 (7) de la Loi est modifié par remplacement de «la partie III de la Loi sur les personnes morales» par «la Loi de 2010 sur les organisations sans but lucratif ou une loi que cette loi remplace».

10.1 L'article 278.1 de la Loi est modifié par suppression de «et 131 (11)».

11 Le paragraphe 281 (5) de la Loi est abrogé et remplacé par ce qui suit :

#### Exceptions : autres questions

(5) Les articles 282 à 310 ne s'appliquent pas :

- a) aux renseignements faisant l'objet d'une interdiction de publication visée au paragraphe 85 (8), (9) ou (10);
- b) aux dossiers auxquels s'applique le paragraphe 127 (6) ou (8);
- c) aux rapports visés par une ordonnance rendue en vertu du paragraphe 160 (6).

#### Exceptions : autres questions

(5) Les articles 282 à 310 ne s'appliquent pas :

- a) aux dossiers auxquels s'applique le paragraphe 127 (6) ou (8);
- b) aux rapports visés par une ordonnance rendue en vertu du paragraphe 160 (6).

12 Le paragraphe 318 (5) de la Loi est modifié par remplacement de «la Loi sur les personnes morales» par «la Loi de 2010 sur les organisations sans but lucratif».

13 Les dispositions 16, 17 et 18 du paragraphe 320 (1) de la Loi sont abrogées.

#### Entrée en vigueur

14 (1) Sous réserve du paragraphe (2), la présente annexe entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

(2) Les articles 1 à 4, 10 et 12 entrent en vigueur le premier jour où l'article 327 de l'annexe 1 de la Loi de 2017 sur le soutien à l'enfance, à la jeunesse et à la famille et le paragraphe 4 (1) de la Loi de 2010 sur les organisations sans but lucratif sont tous deux en vigueur.



# **ANNEXE 3** **MODIFICATIONS DE LA LOI DE 2017 SUR LES SERVICES À L'ENFANCE, À LA JEUNESSE ET À LA FAMILLE**

1 La disposition 7 du paragraphe 45 (5) de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille est modifiée par remplacement de «la Loi sur les personnes morales» par «la Loi de 2010 sur les organisations sans but lucratif».

2 (1) Le paragraphe 46 (3) de la Loi est modifié par remplacement de «du paragraphe 110 (2) de la Loi de 2010 sur les organisations sans but lucratif».

(2) Le paragraphe 46 (4) de la Loi est abrogé et remplacé par ce qui suit :

**Approbation par le ministre des statuts de fusion**

(4) Les sociétés ne doivent pas déposer des statuts de fusion en application de l'article 112 de la Loi de 2010 sur les organisations sans but lucratif sans avoir reçu l'approbation préalable du ministre.

3 (1) La disposition 2 du paragraphe 47 (10) de la Loi est modifiée par remplacement de «la Loi sur les personnes morales, des lettres patentes, des lettres patentes supplémentaires ou des règlements administratifs» par «la Loi de 2010 sur les organisations sans but lucratif, des statuts ou des règlements administratifs» à la fin de la disposition.

(2) Le paragraphe 47 (13) de la Loi est abrogé et remplacé par ce qui suit :

**Approbation par le ministre des statuts de fusion**

(13) La société ne doit pas déposer des statuts de fusion en application de l'article 112 de la Loi de 2010 sur les organisations sans but lucratif sans avoir reçu l'approbation préalable du ministre.

4 L'article 49 de la Loi est abrogé et remplacé par ce qui suit :

**Incompatibilité avec les statuts ou les règlements administratifs de la société**

49 Les articles 43 à 48 l'emportent sur les dispositions incompatibles des statuts ou des règlements administratifs d'une société.

5 Le paragraphe 85 (2) de la Loi est abrogé et remplacé par ce qui suit :

**Champ d'application**

(2) Le présent article s'applique aux audiences tenues sous le régime de la présente partie.

6 Le paragraphe 124 (2) de la Loi est abrogé et remplacé par ce qui suit :

**Définition**

(2) La définition qui suit s'applique au présent article et à l'article 126.

«subir des mauvais traitements» En ce qui concerne un enfant, avoir besoin de protection au sens de l'alinéa 73 (2) a), c), e), f), g) ou j).

7 Les articles 130 et 131 de la Loi sont abrogés.

8 (1) Les alinéas 139 (1) c) et d) de la Loi sont abrogés.

(2) Le paragraphe 139 (3) de la Loi est modifié par suppression de «ou 131 (1)».

9 Le paragraphe 203 (1) de la Loi est abrogé et remplacé par ce qui suit :

**Changement de nom**

(1) Sous réserve du paragraphe (1.1), si le tribunal rend une ordonnance en vertu de l'article 196, il peut, à la demande du ou des requérants, prendre l'une ou l'autre des mesures suivantes :

a) changer le nom de famille de l'adopté et lui donner celui que l'adopté aurait pu avoir s'il avait été l'enfant du ou des requérants à sa naissance en Ontario au moment où l'ordonnance a été rendue;

b) changer le prénom de l'adopté;

c) changer le nom de famille de l'adopté comme le prévoit l'alinéa a) et changer son prénom;

d) changer le nom unique de l'adopté et lui donner celui qui est établi conformément à sa culture traditionnelle ou à celle du ou des requérants si le registre général de l'état civil au sens de la Loi sur les statistiques de l'état civil approuve le nom unique;

e) changer le nom unique de l'adopté et lui donner un nom composé d'au moins un prénom et un nom de famille comme le prévoit l'alinéa a);

(1.1) Le règlement pris en vertu de l'alinéa (1) 1) l'emporte sur toute disposition incompatible de la présente loi ou des règlements.

**(3) Le paragraphe 216 (2) de la Loi est modifié par adjonction des alinéas suivants :**

0.a) prescrire les fonctions et obligations des sociétés ainsi que les droits et responsabilités des enfants à l'égard des ententes conclues en vertu de l'article 37.1 (ententes avec des jeunes de 16 et 17 ans), notamment les services et soutiens qui peuvent être fournis dans le cadre de ces ententes, prescrire les circonstances supplémentaires pour la conclusion de ces ententes et les dispositions qui doivent y figurer, et régir la modification et la résiliation de ces ententes;

c) prescrire des circonstances et des situations pour l'application du paragraphe 72 (3.1).

**12.1 La Loi est modifiée par adjonction de l'article suivant :**

**Règlements : définition de mots ou d'expressions dans la présente loi**

**223.0.1** Le lieutenant-gouverneur en conseil peut, par règlement, définir des mots ou des expressions employés mais non déjà définis dans la présente loi. Il peut aussi définir davantage des mots ou des expressions employés et déjà définis dans la présente loi.

**Entrée en vigueur**

**13 La présente annexe entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.**

**Exception : enfant de 16 ou 17 ans amené dans un lieu sûr ou appréhendé avec consentement**

**40.1 (1)** Un préposé à la protection de l'enfance peut amener dans un lieu sûr, avec son consentement, un enfant de 16 ou 17 ans qui fait l'objet d'une ordonnance de surveillance provisoire ou définitive.

**Ordonnance de surveillance provisoire ou définitive**

**(2)** La définition qui suit s'applique au présent article.

«ordonnance de surveillance provisoire ou définitive» Ordonnance rendue en vertu de l'alinéa 51 (2) b) ou c), de la disposition 1 ou 4 du paragraphe 57 (1), du paragraphe 64 (8) ou 65.1 (10) ou de l'alinéa 65.2 (1) a).

**6 (1) L'alinéa 41 (1) a) de la Loi est abrogé et remplacé par ce qui suit :**

~~a) d'une part, que l'enfant s'est soustrait ou a été soustrait à la garde légitime et aux soins d'une société sans le consentement de celle-ci;~~

**(2) L'alinéa 41 (4) a) de la Loi est abrogé et remplacé par ce qui suit :**

~~a) d'une part, que l'enfant s'est soustrait ou a été soustrait à la garde légitime et aux soins d'une société sans le consentement de celle-ci;~~

**7 Le paragraphe 46 (1) de la Loi est modifié par adjonction de l'alinéa suivant :**

d) une entente doit être conclue en vertu de l'article 37.1 (ententes avec des jeunes de 16 et 17 ans).

**7.1 La Loi est modifiée par adjonction de l'article suivant :**

**Restiction relative au délai dans un lieu sûr : enfant de 16 ou 17 ans**

**46.1** Aussitôt que la chose peut se faire et, en tout état de cause, dans les cinq jours suivant le jour où l'enfant de 16 ou 17 ans est amené, avec son consentement, dans un lieu sûr en vertu de l'article 40.1 :

a) un tribunal doit être saisi de l'affaire afin que soit tenue l'audience prévue au paragraphe 47 (1);

b) l'enfant doit être rendu à la personne à qui l'ordonnance rendue en vertu de la présente partie reconnaît le droit d'avoir la garde de l'enfant.

**8 Le paragraphe 47 (3) de la loi est abrogé.**

**9 L'article 57 de la Loi est modifié par adjonction du paragraphe suivant :**

**Aucune ordonnance si l'enfant n'est pas soumis à l'autorité parentale**

(10) Si le tribunal conclut que l'enfant qui n'était pas soumis à l'autorité parentale immédiatement avant l'intervention prévue sous le régime de la présente partie du fait qu'il s'y était soustrait ou qui se soustrait à l'autorité parentale après une telle intervention a besoin de protection, mais qu'il n'est pas convaincu qu'une ordonnance du tribunal soit nécessaire pour protéger l'enfant à l'avenir, il ne rend aucune ordonnance à l'égard de l'enfant.

**10 L'article 71.1 de la Loi est modifié par adjonction du paragraphe suivant :**

**Idem**

(1.1) Une société peut assumer les soins et l'entretien d'une personne conformément aux règlements si :

a) d'une part, la personne a conclu une entente avec la société en vertu de l'article 37.1 (ententes avec des jeunes de 16 et 17 ans);

b) d'autre part, l'entente a expiré au 18<sup>e</sup> anniversaire de naissance de la personne.

**11 L'article 72 de la Loi est modifié par adjonction du paragraphe suivant :**

**Enfant plus âgé non visé par l'obligation de faire rapport**

(3.1) Les paragraphes (1) et (2) ne s'appliquent pas à l'égard d'un enfant de 16 ou 17 ans. Une personne peut toutefois faire un rapport en application du paragraphe (1) ou (2) à l'égard d'un enfant de 16 ou 17 ans s'il existe l'une des circonstances ou situations visées aux dispositions 1 à 11 du paragraphe (1) ou une circonstance ou situation prescrite.

**12 (1) Le paragraphe 216 (1) de la Loi est modifié par adjonction des alinéas suivants :**

a.2) prescrire les circonstances et situations supplémentaires dans lesquelles un enfant de moins de 18 ans a besoin de protection pour l'application de l'alinéa 37 (2) m);

i) régir les questions transitoires pouvant découler des modifications apportées à la présente loi par l'annexe 2 de la Loi de 2017 sur le soutien à l'enfance, à la jeunesse et à la famille.

**(2) L'article 216 de la Loi est modifié par adjonction du paragraphe suivant :**



(1.1) Si l'entente relative à des soins temporaires à l'égard de l'enfant est résiliée ou expire ou est sur le point d'expirer de la façon décrite à l'article 33 et qu'elle n'est pas prorogée, la société peut conclure une entente écrite en vertu du paragraphe (1), et ce avant la résiliation ou l'expiration de l'entente.

#### **Durée de l'entente**

(2) L'entente peut être conclue pour une période maximale de 12 mois. Elle peut toutefois être renouvelée si sa durée totale, avec les prorogations, ne dépasse pas 24 mois.

#### **Rapports antérieurs ou actuels avec une société**

(3) Un enfant peut conclure une entente en vertu du présent article indépendamment de ses rapports antérieurs ou actuels avec une société et de la période pendant laquelle il a été confié aux soins d'une société conformément soit à une entente conclue en vertu de l'article 29, soit à une ordonnance rendue en vertu de l'alinéa 51 (2) d), de la disposition 2 ou 3 du paragraphe 57 (1) ou du paragraphe 65.2 (1).

#### **Avis de résiliation de l'entente**

(4) Une partie à une entente conclue en vertu du présent article peut la résilier à tout moment en donnant aux autres parties un avis écrit de son intention.

#### **Expiration de l'entente : 18 ans**

(5) Aucune entente conclue en vertu du présent article ne demeure en vigueur après le 18<sup>e</sup> anniversaire de naissance de la personne qui en fait l'objet.

#### **Instances et ordonnances en cours**

(6) Malgré le paragraphe (3), aucune entente ne peut être conclue en vertu de l'article 29 ou qu'une ordonnance en matière de soins ou de surveillance d'un enfant visée à la présente partie n'est pas révoquée.

#### **Représentation par l'avocat des enfants**

(7) L'avocat des enfants peut représenter l'enfant qui conclut une entente en vertu du présent article s'il est d'avis que cela est approprié.

#### **5.1 (1) La version anglaise du paragraphe 40 (2) de la Loi est modifiée par adjonction de l'alinéa suivant :**

(0.a) the child is less than 16 years old;

(2) La version française du paragraphe 40 (2) de la Loi est abrogée et remplacée par ce qui suit :

#### **Mandat d'amener un enfant**

(2) Un juge de paix peut décerner un mandat autorisant un préposé à la protection de l'enfance à amener un enfant dans un lieu sûr s'il est convaincu, à la suite d'une dénonciation faite sous serment par un préposé à la protection de l'enfance, qu'il existe des motifs raisonnables et probables de croire ce qui suit :

(0.a) l'enfant a moins de 16 ans;

a) l'enfant a besoin de protection;

b) un autre plan d'action moins restrictif n'est pas disponible ou ne protégera pas suffisamment l'enfant.

(3) La version anglaise du paragraphe 40 (7) de la Loi est modifiée par suppression de «and» à la fin de l'alinéa a) et par adjonction de l'alinéa suivant :

(a.1) the child is less than 16 years old; and

(4) La version française du paragraphe 40 (7) de la Loi est abrogée et remplacée par ce qui suit :

#### **Appréhension de l'enfant sans mandat**

(7) Le préposé à la protection de l'enfance peut, sans mandat, conduire un enfant dans un lieu sûr si, en se fondant sur des motifs raisonnables et probables, il croit ce qui suit :

a) l'enfant a besoin de protection;

a.1) l'enfant a moins de 16 ans;

b) la santé ou la sécurité de l'enfant risqueraient vraisemblablement d'être compromises pendant le laps de temps nécessaire à l'obtention d'une audience en vertu du paragraphe 47 (1) ou d'un mandat en vertu du paragraphe (2).

#### **5.2 La Loi est modifiée par adjonction de l'article suivant :**

## ANNEXE 2 MODIFICATIONS DE LA LOI SUR LES SERVICES À L'ENFANCE ET À LA FAMILLE

1 Les alinéas 15 (3) a) et b) de la Loi sur les services à l'enfance et à la famille sont abrogés et remplacés par ce qui suit :

- a) enquêter sur les allégations ou les preuves selon lesquelles des enfants peuvent avoir besoin de protection;
- b) protéger les enfants en cas de besoin;

2 (0.1) Le paragraphe 27 (1) de la Loi est abrogé et remplacé par ce qui suit :

### Consentement à un service

### Consentement : personne de 16 ans ou plus

(1) Sous réserve de l'alinéa (2) b) et du paragraphe (3.1), le fournisseur de services peut fournir un service à une personne de 16 ans ou plus uniquement avec le consentement de cette personne, sauf si le tribunal ordonne, en vertu de la présente loi, que le service soit fourni à cette personne.

2 (1) Les paragraphes 27 (2) et (3) de la Loi sont abrogés et remplacés par ce qui suit :

### Consentement : enfant de moins de 16 ans ou confié à une société

(2) Sauf disposition contraire de la présente loi, le fournisseur de services ne peut fournir un service en établissement à un enfant :

- a) qu'avec le consentement d'un parent de l'enfant, si l'enfant a moins de 16 ans;
- b) qu'avec le consentement de la société, si l'enfant est confié à la garde légitime d'une société.

### Exception — Partie III

(3) Le paragraphe (1) ne s'applique pas si le service est fourni à un enfant sous le régime de la partie III (Protection de l'enfance).

### Exception — Part IV

(3.1) Les paragraphes (1) et (2) ne s'appliquent pas si le service est fourni à un adolescent sous le régime de la partie IV (Justice pour les adolescents).

(2) Le paragraphe 27 (4) de la Loi est modifié par adjonction de l'alinéa suivant :

- c) que conformément au paragraphe 37.1 (4) (avis de résiliation), si le placement est effectué en vertu d'une entente conclue en vertu du paragraphe 37.1 (1) (ententes avec des jeunes de 16 et 17 ans).

3 Le paragraphe 29 (2) de la Loi est abrogé et remplacé par ce qui suit :

### Âge de l'enfant

(2) Aucune entente relative à des soins temporaires ne doit être conclue à l'égard d'un enfant de 12 ans ou plus, à moins qu'il ne soit partie à l'entente.

4 (1) La définition de «enfant» au paragraphe 37 (1) de la Loi est abrogée.

(2) Le paragraphe 37 (2) de la Loi est modifié par adjonction de l'alinéa suivant :

- m) l'enfant de 16 ou 17 ans dans les circonstances ou situations prescrites.

5 La Loi est modifiée par adjonction de l'article suivant :

### Ententes avec des jeunes de 16 et 17 ans

37.1 (1) La société et l'enfant de 16 ou 17 ans peuvent conclure une entente écrite relativement à la prestation de services et de soutiens à l'enfant si les conditions suivantes sont réunies :

- a) la société exerce sa compétence dans le territoire où l'enfant réside;
- b) la société a établi que l'enfant a ou peut avoir besoin de protection;
- c) la société est convaincue qu'aucun autre plan d'action moins perturbateur, comme la prestation de soins à l'enfant dans son propre foyer ou auprès d'un membre de sa parenté, d'un voisin ou d'un autre membre de sa communauté ou de sa famille élargie, ne peut convenablement protéger l'enfant;
- d) l'enfant veut conclure l'entente.

14. prescrire des personnes pour l'application du paragraphe 298 (3);

15. prescrire des dispositions et prescrire et régir la manière de consigner les divulgations pour l'application du paragraphe 299 (3);

16. prescrire des exceptions et des exigences supplémentaires pour l'application du paragraphe 301 (2);

17. prescrire des exigences pour l'application du paragraphe 301 (3) et de l'alinéa 302 (1) b);

18. prescrire des circonstances pour l'application du paragraphe 305 (10) et régir les droits qui peuvent être exigés en de telles circonstances;

19. permettre que les avis, déclarations ou autres choses qui, en application de la présente partie, doivent être remis par écrit soient plutôt remis sur support électronique ou sous une autre forme, sous réserve des conditions ou restrictions que précisent les règlements pris en vertu du présent article;

20. exiger que les fournisseurs de services fournissent des renseignements au commissaire et préciser le type de renseignements devant être fournis de même que le moment où ils doivent l'être et la manière dont ils doivent l'être.

## Règlements : Partie XI (Dispositions diverses)

326 Pour l'application de la partie XI, le lieutenant-gouverneur en conseil peut, par règlement :

1. prescrire le nombre de membres de la Commission et le nombre de membres qui constitue le quorum;

2. prescrire les pouvoirs, les fonctions et les règles supplémentaires de la Commission;

3. traiter des vérifications de dossiers de police pour l'application de l'article 312, notamment :

i. exiger que différentes catégories de personnes fournissent différents types de vérifications de dossiers de police ou différents types de renseignements dans le cadre d'une vérification,

ii. prescrire la marche à suivre lorsqu'une vérification de dossier de police est exigée,

iii. prescrire d'autres personnes pour l'application de la disposition 3 de l'article 312,

iv. exiger l'obtention de vérifications de dossiers de police auprès d'autorités législatives hors de l'Ontario dans des circonstances déterminées;

4. prescrire les autres entités auprès desquelles une société peut demander des vérifications de dossiers de police en vertu de l'article 313, prescrire les autres renseignements qui peuvent être demandés, et traiter des vérifications de dossiers de police et des autres renseignements qui peuvent être demandés;

4. traiter des vérifications de dossiers de police pour l'application de l'article 313, notamment :

i. prescrire les autres entités auprès desquelles une société peut demander des vérifications de dossiers de police ou d'autres renseignements,

ii. prescrire les autres renseignements qui peuvent être demandés,

iii. prescrire les circonstances dans lesquelles une demande peut être faite de même que les fins pour lesquelles elle peut être faite,

iv. prescrire la marche à suivre lorsqu'une vérification de dossier de police ou d'autres renseignements sont demandés.

## PARTIE XIII

### ABROGATION, ENTRÉE EN VIGUEUR ET TITRE ABRÉGÉ

#### Abrogation

327 La Loi sur les services à l'enfance et à la famille est abrogée.

#### Entrée en vigueur

328 La loi figurant à la présente annexe entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

#### Titre abrégé

329 Le titre abrégé de la loi figurant à la présente annexe est *Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille*.



1. prescrire ou prévoir autrement tout ce que la partie IX exige ou permet de prescrire ou de prévoir autrement dans les règlements, à l'exception de ce qui est visé au paragraphe (1) du présent article, y compris régir tout ce qui doit ou peut être accompli conformément aux règlements;

2. préciser et régir les catégories de permis qui peuvent être attribuées pour l'application de l'article 255;

3. régir la somme ou le mode de calcul de la somme que peut exiger un titulaire de permis au titre de la prestation de soins en établissement en vertu d'un permis à cet effet pour l'application de l'article 265, y compris régir les examens et les modifications apportées à la somme ou au mode de calcul, ainsi que les circonstances dans lesquelles un titulaire de permis peut exiger une somme différente de celle qu'il pourrait exiger autrement;

4. régir, d'une part, la gestion et le fonctionnement des foyers pour enfants et des autres lieux où sont fournis des soins en établissement en vertu d'un permis à cet effet et, d'autre part, les locaux d'hébergement, les installations, l'équipement et les services qui doivent y être fournis;

5. préciser et régir les normes et mesures de rendement à l'égard de la prestation de services dans les foyers pour enfants ou dans les autres lieux où sont fournis des soins en établissement en vertu d'un permis à cet effet, y compris les normes applicables à la qualité des soins et à la réactivité aux besoins culturels;

6. prescrire les livres et les dossiers que doivent tenir les titulaires de permis;

7. prescrire les qualités requises, les pouvoirs et les fonctions des personnes qui surveillent des enfants dans les foyers pour enfants et les autres lieux où sont fournis des soins en établissement en vertu d'un permis à cet effet;

8. prescrire les mesures de présélection applicables aux titulaires de permis, aux auteurs d'une demande de permis ou de renouvellement d'un permis et aux autres personnes qui fournissent des soins en établissement à des enfants dans les foyers pour enfants ou dans des lieux où sont fournis des soins en établissement en vertu d'un permis à cet effet;

9. régir le protocole d'admission d'enfants dans les foyers pour enfants ou les autres lieux où sont fournis des soins en établissement en vertu d'un permis à cet effet de même que le protocole de mise en congé;

10. exiger des titulaires de permis et des auteurs d'une demande de permis ou de renouvellement d'un permis qu'ils fournissent des renseignements, des rapports et des états, et traiter de la manière dont ceux-ci doivent être fournis.

### Règlements : Partie X (Renseignements personnels)

325 Pour l'application de la partie X, le lieutenant-gouverneur en conseil peut, par règlement :

1. prescrire des personnes pour l'application de la disposition 2 du paragraphe 279 (2);

2. prescrire les autres ministres avec lesquels le ministre peut échanger des renseignements pour l'application du paragraphe 279 (5);

3. prescrire les exigences et restrictions se rapportant aux activités de recherche et d'analyse pour l'application du paragraphe 279 (7);

4. prescrire et régir les modes de remise d'un avis visés à l'alinéa 279 (8) b);

4. prescrire et régir les modes de remise des avis visés aux alinéas 279 (8) b) et 280 (3) b);

5. prescrire les fins de la collecte visées à l'article 280;

6. prescrire des fins liées aux fonctions d'une société pour l'application du sous-alinéa 284 (2) b) (ii) et de l'alinéa 288 (2) b);

6. prescrire les fins liées à l'exercice des fonctions d'une société pour l'application de l'alinéa 284 (2) b.1), du sous-alinéa 287 (2) a) (ii) et du paragraphe 288 (2.1);

7. préciser les exigences auxquelles une consigne expresse visée à l'alinéa 287 (1) a);

8. prescrire des exigences et des restrictions pour l'application des alinéas 284 (2) d), 287 (1) j) et k) et 288 (1) h) et des paragraphes 289 (2) et (3) et 298 (1) et (4);

8. prescrire des exigences et des restrictions pour l'application des alinéas 284 (2) d), 287 (1) j) et k) et 288 (1) h) et des paragraphes 289 (2) et (3), 296.1 (10), 298 (1) et (4) et 298.1 (10);

9. prescrire des entités pour l'application de l'article 289;

10. prescrire des renseignements et des circonstances pour l'application du paragraphe 289 (4);

11. prescrire des exceptions et des exigences supplémentaires pour l'application du paragraphe 289 (9);

12. prescrire un organisme pour l'application de l'article 298;

12. prescrire un organisme pour l'application des articles 296.1, 298 et 298.1;

13. prescrire des renseignements pour l'application du paragraphe 298 (2);

«Autorité centrale» L'Autorité centrale désignée en vertu de l'alinéa 24 a) de la Loi de 1998 sur l'adoption internationale.

«Central Authority»

«Convention» La Convention sur la protection des enfants et la coopération en matière d'adoption internationale qui figure à l'annexe de la Loi de 1998 sur l'adoption internationale. («Convention»)

## Idem

(3) Le lieutenant-gouverneur en conseil peut, par règlement, assigner les fonctions de l'Autorité centrale visées par la partie VIII à des autorités publiques, à des organismes agréés ou à des personnes conformément à l'article 22 de la Convention.

## Règlements du ministre

(4) Pour l'application de la partie VIII, le ministre peut, par règlement :

1. prescrire la forme de l'affidavit du témoin à la signature pour l'application du paragraphe 177 (12);

2. prescrire le mode d'enregistrement des placements prévu au paragraphe 180 (7);

3. prescrire des personnes pour l'application du sous-alinéa 185 (3) b) (iii);

4. prescrire des personnes et des entités ainsi que les délais pour l'application de l'alinéa 235 b);

5. prescrire les livres et les dossiers que doivent tenir les titulaires de permis;

6. exiger des titulaires de permis et des auteurs d'une demande de permis ou de renouvellement d'un permis qu'ils fournissent des renseignements, des rapports et des états, et traiter de la manière dont ceux-ci doivent être fournis;

7. prévoir l'examen des dossiers des titulaires de permis;

8. régir les qualités requises des personnes employées par les titulaires de permis;

9. exiger des titulaires de permis qu'ils fournissent un cautionnement ou qu'ils présentent des lettres de crédit sous la forme et aux conditions prescrites et avec les garanties accessoires prescrites, prescrire la forme et les conditions de ces cautionnements et lettres de crédit et des garanties accessoires, et prévoir la réalisation des cautionnements et des lettres de crédit ainsi que la disposition du produit.

## Règlements : Partie IX (Permis d'établissement)

### Règlements du lieutenant-gouverneur en conseil

324 (1) Pour l'application de la partie IX, le lieutenant-gouverneur en conseil peut, par règlement :

1. prescrire d'autres foyers pour l'application de la disposition 3 de la définition de «foyer pour enfants» à l'article 240;

2. prescrire d'autres lieux pour l'application de la disposition 12 de la définition de «foyer pour enfants» à l'article 240;

3. prescrire les circonstances dans lesquelles un permis est exigé pour fournir des soins en établissement pour l'application de la sous-disposition 2 ii de l'article 241;

4. prescrire des circonstances pour l'application de l'article 248;

(1);

5. prescrire les questions à l'égard desquelles le ministre peut donner des directives pour l'application du paragraphe 249

6. régir les examens et les appels visés à l'article 257;

7. régir la délivrance, le renouvellement et l'expiration des permis et prescrire les droits que l'auteur d'une demande doit acquitter pour l'obtention ou le renouvellement d'un permis;

8. prescrire les motifs pouvant justifier le refus de délivrer un permis pour l'application de l'alinéa 258 f);

9. prescrire les motifs pouvant justifier la révocation d'un permis ou le refus de le renouveler pour l'application de l'alinéa 259 g);

10. prescrire d'autres pouvoirs et fonctions d'un inspecteur pour l'application du paragraphe 270 (3);

11. prescrire d'autres pouvoirs d'un inspecteur pour l'application de l'alinéa 273 (1) i);

12. prescrire des normes et des protocoles pour l'utilisation de contenants physiques dans les foyers pour enfants ou les autres lieux où sont fournis des soins en établissement en vertu d'un permis à cet effet;

13. prescrire les dispositions de la partie IX ou des règlements pour l'application de l'alinéa 277 (1) i);

14. prescrire les dispositions de la partie IX ou des règlements pour l'application de l'alinéa 277 (3) c).

## Règlements du ministre

(2) Pour l'application de la partie IX, le ministre peut, par règlement :

10. prescrire des médicaments, des combinaisons de médicaments ou des catégories de médicaments comme psychotropes.

### Règlements : Partie VIII (Adoption et délivrance de permis relatifs à l'adoption)

323 (1) Pour l'application de la partie VIII, le lieutenant-gouverneur en conseil peut, par règlement :

1. désigner une personne ou un organisme pour exercer des pouvoirs et des fonctions à l'égard d'une adoption;
2. régir la personne ou l'organisme désigné en vertu de la disposition 1, y compris prescrire les pouvoirs et les fonctions de cette personne ou de cet organisme;
3. prescrire des critères pour l'application de la définition de «parent de naissance» au paragraphe 176 (1);
4. prescrire des questions pour l'application de l'alinéa 177 (4) b);
5. prescrire des circonstances particulières pour l'application du paragraphe 185 (9) (placement à l'extérieur du Canada);
6. régir les demandes de révision présentées en vertu du paragraphe 189 (3);
7. prescrire des règles de pratique et de procédure supplémentaires pour l'application du paragraphe 189 (7);
8. prescrire l'expérience ou les qualités requises qu'un membre de la Commission est tenu de posséder pour l'application du paragraphe 189 (8);
9. régir les modalités que doit suivre le directeur lorsqu'il effectue l'examen prévu au paragraphe 190 (3), les types de décisions et de directives qu'il est autorisé à prendre ou à donner après avoir effectué un examen, et les conséquences d'une décision ou d'une directive;
10. prescrire une méthode de règlement extrajudiciaire des différends pour l'application des paragraphes 195 (8) et 204 (9);
11. régir le placement d'enfants en vue de leur adoption;
12. prescrire des règles et des normes régissant le placement, par les titulaires de permis, d'enfants en vue de leur adoption;
13. régir les ordonnances de communication prévues sous le régime de la partie VIII;
14. prescrire des personnes pour l'application de l'alinéa 219 (3) d);
15. prescrire les pouvoirs et les fonctions d'un dépositaire désigné visé à l'article 220 et régir les honoraires qu'il peut demander relativement à l'exercice de ses pouvoirs et de ses fonctions;
16. régir la divulgation de renseignements en application de l'article 221 à un dépositaire désigné;
17. régir la divulgation de renseignements en application de l'article 222 par le ministre, une société, un titulaire de permis ou un dépositaire désigné;
18. établir et régir un mécanisme de révision ou d'appel des décisions du ministre, d'une société, d'un titulaire de permis ou d'un dépositaire désigné concernant une divulgation de renseignements en application de l'article 221 ou 222;
19. régir les droits qu'une société, un titulaire de permis ou un dépositaire désigné peut demander pour la divulgation de renseignements en application de l'article 221 ou 222;
20. régir l'inspection, le retrait ou la modification de renseignements liés à une adoption pour l'application de l'alinéa 224 (1) b);
21. soustraire un titulaire de permis ou une catégorie de titulaires de permis à tout ou partie des dispositions ou exigences de la partie VIII ou des règlements pris en vertu de cette partie, soit indéfiniment soit pour une période déterminée;
22. régir la délivrance, le renouvellement et l'expiration des permis, et prescrire les droits que l'auteur d'une demande doit acquitter pour l'obtention ou le renouvellement d'un permis;
23. prescrire les motifs justifiant le refus de délivrer un permis pour l'application de l'alinéa 228 c);
24. prescrire les motifs justifiant la révocation d'un permis ou le refus de le renouveler pour l'application de l'alinéa 229 c);
25. prescrire les dépenses qui peuvent être réclamées en vertu de l'alinéa 237 d) et les conditions en vertu desquelles elles peuvent l'être.

### Fonctions de l'Autorité centrale

(2) Les définitions qui suivent s'appliquent au paragraphe (3).



1. prescrire les protocoles d'admission de personnes à des programmes de traitement en milieu fermé de mise en congé;
  2. prescrire des normes applicables aux programmes de traitement en milieu fermé;
  3. régir les politiques relatives à l'utilisation de contentions mécaniques exigées par l'article 157, notamment prescrire les dispositions qui doivent être incluses et celles qui peuvent ne pas l'être;
  4. prescrire des normes applicables aux pièces de désescalade sous clé;
  5. prescrire la marche à suivre lorsqu'un enfant ou un adolescent est placé dans une pièce de désescalade sous clé ou qu'il en sort;
  6. prescrire la fréquence des examens prévus au paragraphe 171 (6);
  7. prescrire les normes et protocoles supplémentaires auxquels le fournisseur de services doit se conformer en application du paragraphe 171 (9);
  8. prescrire les questions qui doivent faire l'objet d'un examen, ainsi que les rapports supplémentaires qui doivent être fournis en application de l'article 172;
  9. prescrire des techniques comme techniques d'ingénierie;
- 322 Pour l'application de la partie VII, le lieutenant-gouverneur en conseil peut, par règlement :

#### Règlements : Partie VII (Mesures extraordinaires)

15. traiter de toute question jugée nécessaire ou utile pour réaliser efficacement l'intention et l'objet de la partie VI.
  14. prescrire les procédures de saisie et de disposition d'objets interdits trouvés pendant une perquisition ou une fouille;
  13. régir les perquisitions et les fouilles visées au paragraphe 152 (1);
  12. régir l'exercice du pouvoir d'entrer dans un local en vertu du paragraphe 150 (5);
  11. prescrire les pouvoirs, les fonctions et les règles supplémentaires de la Commission;
  10. prescrire le nombre de membres de la Commission et le nombre de membres qui constitue le quorum;
  9. prescrire les protocoles d'admission d'adolescents dans des lieux de détention provisoire et des lieux de garde en milieu ouvert ou en milieu fermé ou dans des locaux où est fourni un service, de même que les protocoles de mise en congé de ces lieux ou locaux;
  8. régir la conduite, la discipline, les droits et les privilèges des adolescents dans des lieux de détention provisoire et des lieux de garde en milieu ouvert ou en milieu fermé;
  7. prescrire les rapports qui doivent être présentés et les renseignements qui doivent être présentés ou fournis; l'article 144, de même que leur forme et les intervalles auxquels ils doivent être présentés ou fournis;
  6. prescrire les fonctions supplémentaires des responsables des lieux de détention provisoire et des lieux de garde en milieu ouvert et en milieu fermé;
  5. prescrire les qualités requises des agents de probation;
  4. prescrire les fonctions des huissiers;
    - i. des agents de probation,
    - ii. des directeurs provinciaux;
  3. prescrire les fonctions supplémentaires :
    - i. des agents de probation,
    - ii. des directeurs provinciaux;
  2. régir l'ouverture et le fonctionnement des locaux ouverts, exploités, maintenus ou désignés pour l'application de la *Loi sur le système de justice pénale pour les adolescents* (Canada), et traiter des locaux d'hébergement, de l'équipement et des services qui doivent y être fournis;
  1. régir l'ouverture, le fonctionnement, l'entretien, la gestion et l'utilisation de lieux de détention provisoire et de lieux de garde en milieu ouvert et en milieu fermé;
- 321 Pour l'application de la partie VI, le lieutenant-gouverneur en conseil peut, par règlement :

#### Règlements : Partie VI (Justice pour les adolescents)

10. traiter des évaluations qui doivent être effectuées en application du paragraphe 123 (1).
9. prescrire des circonstances et des situations pour l'application du paragraphe 122 (4);
8. prescrire des services de soutien pour l'application de la disposition 3 du paragraphe 121 (1);

2. prescrire les circonstances et les situations dans lesquelles un jeune de 16 ou 17 ans peut être considéré comme ayant besoin de protection pour l'application de l'alinéa 73 (2) o);

3. régir l'exercice des pouvoirs d'entrer dans des locaux énoncés aux paragraphes 80 (6) et (10) et 84 (1) et (2);

4. prescrire des méthodes de règlement extrajudiciaire des différends pour l'application de l'article 92;

5. confier à un directeur des pouvoirs, fonctions ou obligations de la Couronne en ce qui concerne les enfants confiés aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c);

6. prescrire des critères supplémentaires relativement aux circonstances dans lesquelles une évaluation peut être ordonnée en vertu de l'article 95, et régir la portée de l'évaluation et la forme du rapport d'évaluation visé à cet article;

7. traiter des demandes de révision présentées à la Commission en vertu du paragraphe 106 (8);

8. prescrire des règles de pratique et de procédure supplémentaires pour l'application du paragraphe 106 (11);

9. prescrire l'expérience ou les qualités requises qu'un membre de la Commission est tenu de posséder afin d'effectuer une révision en application du paragraphe 106 (9), 116 (6) ou 117 (5);

10. traiter de la présentation d'une plainte à une société en vertu du paragraphe 116 (1) ou à la Commission en vertu du paragraphe 116 (5) ou 117 (3);

11. prescrire des questions pour l'application de la disposition 2 du paragraphe 116 (5) et de la disposition 6 du paragraphe 117 (4);

12. prescrire les ordonnances supplémentaires que la Commission peut rendre pour l'application des alinéas 116 (10) d) et 117 (7) f);

13. prescrire des règles de pratique et de procédure applicables aux audiences que tient la Commission en vertu du paragraphe 116 (8) ou dans le cadre de la révision d'une plainte effectuée en application de l'article 117;

14. traiter de la forme des mandats décernés en vertu des articles 128 et 129 et de la marche à suivre pour demander, décerner, recevoir et déposer des mandats de différentes formes;

15. prescrire les modalités de présentation d'une demande de mandat en vertu de l'article 129, y compris celles qui ne consistent pas à présenter une dénonciation sous serment, établir les circonstances dans lesquelles ces modalités peuvent être utilisées et prévoir les exigences supplémentaires qui doivent être satisfaites en pareil cas;

16. traiter de la manière dont doit être tenu le registre visé au paragraphe 130 (5);

17. exiger la suppression d'un nom du registre visé au paragraphe 130 (5), ou la modification du registre, dans des circonstances précises, et préciser ces circonstances;

18. prescrire les règles de pratique et de procédure applicables aux audiences tenues en vertu de l'alinéa 131 (4) b);

## Règlements du ministre

(2) Pour l'application de la partie V, le ministre peut, par règlement :

1. prescrire des exigences et des fins pour l'application de la définition de «préposé à la protection de l'enfance»;

2. traiter des modalités que doit suivre une société ou un fournisseur de services aux familles et aux enfants pour l'application du paragraphe 73 (5);

3. prescrire les dispositions supplémentaires qui doivent figurer dans une entente relative à des soins temporaires pour l'application de la disposition 7 du paragraphe 74 (10);

4. prescrire la manière de modifier une entente relative à des soins temporaires en vertu du paragraphe 74 (12);

5. prescrire les fonctions et obligations des sociétés ainsi que les droits et responsabilités des enfants à l'égard des ententes conclues en vertu de l'article 76 (ententes avec des jeunes de 16 et 17 ans), notamment les services et soutiens qui peuvent être fournis dans le cadre de ces ententes, prescrire des circonstances supplémentaires pour la conclusion de ces ententes et les dispositions qui doivent y figurer, et régir la modification et la résiliation de ces ententes;

6. régir la procédure d'examen des plaintes que les sociétés doivent suivre pour l'application du paragraphe 116 (2);

7. prescrire les soins et le soutien qui peuvent être fournis à des personnes en vertu de l'article 121 ainsi que les conditions applicables;

7. régir les ententes conclues en vertu de l'article 121, y compris prescrire les entités tenues de conclure de telles ententes, l'expiration, le renouvellement et la résiliation de ces ententes, les clauses qu'elles doivent comporter, les soins et le soutien qui doivent être fournis à des personnes en application de ces ententes, les conditions applicables à la prestation de ces soins et de ce soutien, et toute exception à l'exigence voulant qu'une entente soit conclue ou que des soins et du soutien soient fournis en vertu de l'article 121;

1. régir le transfert et la cession des éléments d'actif des fournisseurs de services et des organismes responsables pour l'application de l'article 28;

2. établir des catégories d'organismes responsables pour l'application du paragraphe 29 (4) et en traiter;

3. prescrire les fonctions de chaque catégorie d'organismes responsables pour l'application du paragraphe 29 (5);

4. prescrire les questions au sujet desquelles le ministre peut donner des directives pour l'application du paragraphe 31 (2);

5. prescrire d'autres fonctions d'une société pour l'application de l'alinéa 34 (1) g);

6. traiter de la composition des conseils d'administration des sociétés, notamment prescrire les qualités requises et les critères d'admissibilité des membres du conseil d'administration, et exiger des membres des conseils qu'ils suivent des programmes de formation et prescrire ces programmes;

7. prescrire le nombre de représentants des Premières Nations, des Inuits ou des Métis devant faire partie du conseil d'administration des sociétés, de même que le mode de leur nomination et la durée de leur mandat, pour l'application du paragraphe 35 (1);

8. prescrire les dispositions qui doivent être incluses dans les règlements administratifs des sociétés pour l'application du paragraphe 35 (3);

9. prévoir la création, la composition et les pouvoirs et fonctions du bureau du conseil d'administration d'une société, et fixer son quorum;

10. prescrire les droits qui peuvent être exigés au titre des services, ainsi que les conditions applicables;

11. traiter des questions qui se rapportent à une fusion visée à l'article 46 ou à un arrêté du ministre pris en vertu de l'article 47, ou qui en découlent, notamment des règles régissant les ordonnances du tribunal rendues à l'égard d'une société;

12. prescrire des motifs pour l'application du sous-alinéa 59 (2) c) (ii).

## Restructuration

(5) Un règlement pris en vertu de la disposition 11 du paragraphe (4) l'emporte sur toute disposition incompatible de la *Loi sur les personnes morales* ou des règlements pris en vertu de cette loi.

## Règlements : Partie IV (Services à l'enfance et à la famille — Premières Nations, Inuits et Métis)

### Règlements du lieutenant-gouverneur en conseil

319 (1) Pour l'application de la partie IV, le lieutenant-gouverneur en conseil peut, par règlement :

1. modifier ou exclure l'application de toute disposition ou exigence de la présente loi ou des règlements à un fournisseur de services aux familles et aux enfants inuits, métis ou de Premières Nations, à une bande ou une communauté inuite, métisse ou de Premières Nations, ou à des personnes ou catégories de personnes précises, y compris des personnes qui offrent aux enfants des soins conformes aux traditions, et prévoir l'application d'autres dispositions ou exigences à la place ou en plus des dispositions ou des exigences de la présente loi et des règlements.

### Règlements du ministre

(2) Pour l'application de la partie IV, le ministre peut, par règlement :

1. régir le processus à suivre pour dresser des listes de communautés inuites, métisses ou de Premières Nations dans un règlement pris en vertu du paragraphe 67 (1), y compris les modalités que doit suivre une communauté et les exigences auxquelles elle doit satisfaire;

2. prescrire les questions devant faire l'objet de consultations entre, d'une part, les sociétés ou les sociétés, les personnes ou les entités et, d'autre part, les bandes ou communautés inuites, métisses ou de Premières Nations pour l'application de l'alinéa 71 i);

3. régir les consultations avec les bandes et les communautés inuites, métisses ou de Premières Nations prévues aux articles 71 et 72, et prescrire les modalités que doivent suivre les sociétés et les agences, les personnes et les entités de même que leurs fonctions lors de ces consultations;

4. prescrire des services et des pouvoirs pour l'application de l'article 72.

## Règlements : Partie V (Protection de l'enfance)

### Règlements du lieutenant-gouverneur en conseil

320 (1) Pour l'application de la partie V, le lieutenant-gouverneur en conseil peut, par règlement :

1. prescrire des autorités législatives hors du Canada dont les ordonnances rendues par un tribunal peuvent être reconnues comme ordonnances extraprovinciales de protection d'un enfant, et les conditions d'une telle reconnaissance;



1. prescrire des entités auxquelles des fonds peuvent être alloués pour l'application de l'alinéa 24 c);
2. prescrire d'autres fins pour lesquelles des fonds peuvent être alloués en vertu de l'alinéa 24 c);

2.1 prescrire les renseignements que doit contenir ou exclure le sommaire d'un ordre mis à la disposition du public en application de l'alinéa 32 (4) b) ou 42 (4) b);

3. prescrire les normes de service et les modalités que les sociétés doivent respecter pour l'application du paragraphe 34 (2);
4. régir la gestion et le fonctionnement des sociétés;
5. prescrire un système pour calculer le montant des paiements prévus au paragraphe 39 (1);
6. prescrire les conditions qui doivent ou peuvent être incluses dans les ententes de responsabilisation pour l'application du paragraphe 40 (4);
7. régir la prestation de services;
8. régir les locaux d'hébergement, les installations et l'équipement qui doivent être fournis ;
- i. dans les bâtiments où sont fournis des services,
- ii. dans le cadre de la prestation de services;
9. régir l'ouverture, la gestion, le fonctionnement, l'emplACEMENT, la construction, l'aménagement et la rénovation des bâtiments où sont fournis des services;
10. prescrire les livres et les dossiers que les sociétés doivent tenir, ainsi que les états qu'elles doivent dresser, les rapports et qu'elles doivent faire et les budgets qu'elles doivent présenter au ministre, et prescrire les méthodes, délais et modalités applicables;

11. exiger des fournisseurs de services qu'ils tiennent des dossiers et prescrire la forme et le contenu de ces dossiers;
12. prévoir le recouvrement, par une agence ou le ministre, auprès de la ou des personnes qui sont ou ont été responsables d'un enfant, ou de la succession de cette ou ces personnes, des montants que l'agence a payés pour l'entretien de l'enfant et les soins qui lui ont été fournis, et prescrire les circonstances dans lesquelles un tel recouvrement peut être effectué ainsi que ses modalités;

13. prévoir le recouvrement des paiements faits aux sociétés en vertu de la partie III et des règlements;
14. régir la construction, l'aménagement, la rénovation, l'agrandissement, l'aménagement et l'équipement des foyers dont les sociétés assurent le fonctionnement ou la surveillance, à l'exception des foyers pour enfants au sens de la partie IX (Permis d'établissement) où des soins en établissement sont fournis aux enfants;
15. prescrire les rapports qui doivent être présentés et les renseignements qui doivent être fournis en application de l'article 55 de même que leur forme et les intervalles auxquels ils doivent être présentés ou fournis;
16. prescrire les entités ainsi que les rapports et les renseignements qui doivent leur être fournis de même que la manière dont ils doivent l'être pour l'application de l'article 56;
17. prescrire les renseignements et la manière de les mettre à la disposition du public pour l'application de l'article 57;
18. prescrire d'autres personnes auxquelles un superviseur de programme doit remettre un rapport d'inspection pour l'application de l'alinéa 60 (1) c);
19. prescrire des règles pour établir si un enfant réside dans le territoire de compétence d'un comité consultatif;
20. prescrire les règles de pratique et de procédure que les comités consultatifs doivent suivre de même que leurs obligations supplémentaires.

## Normes de service

(2) Un règlement pris en vertu de la disposition 3 du paragraphe (1) peut :

- a) soustraire une ou plusieurs sociétés à tout ce qui est prescrit en vertu de cette disposition;
- b) prescrire des normes de service qui ne s'appliquent qu'à une ou plusieurs sociétés prévues par les règlements;
- c) prescrire les modalités que ne doivent suivre qu'une ou plusieurs sociétés prévues par les règlements.

## Montants des paiements aux sociétés

(3) Un règlement pris en vertu de la disposition 5 du paragraphe (1) s'applique, s'il comprend une disposition à cet effet, à une période antérieure à son dépôt.

## Règlements du lieutenant-gouverneur en conseil

(4) Pour l'application de la partie III, le lieutenant-gouverneur en conseil peut, par règlement :

2. régir la manière dont les fournisseurs de services, lorsqu'ils prennent des décisions à l'égard d'un enfant, doivent tenir compte de la race de l'enfant, de son ascendance, de son lieu d'origine, de sa couleur, de son origine ethnique, de sa citoyenneté, de la diversité de sa famille, de son handicap, de sa croyance, de son sexe, de son orientation sexuelle, de son identité sexuelle et de l'expression de son identité sexuelle afin de réaliser l'objet énoncé à la sous-disposition 3 iii du paragraphe 1 (2);

3. régir la manière dont les fournisseurs de services, lorsqu'ils prennent des décisions à l'égard d'un enfant, doivent tenir compte des besoins de l'enfant sur les plans culturel et linguistique afin de réaliser l'objet énoncé à la sous-disposition 3 iv du paragraphe 1 (2);

4. régir la manière dont les fournisseurs de services, lorsqu'ils prennent des décisions à l'égard d'un enfant, doivent tenir compte des différences régionales afin de réaliser l'objet énoncé à la disposition 4 du paragraphe 1 (2);

5. régir la manière dont les fournisseurs de services, dans le cas d'un enfant inuit, métis ou de Premières Nations, doivent tenir compte de sa culture, de son patrimoine, de ses traditions, des liens qui l'unissent à la communauté et du concept de la famille élargie afin de réaliser l'objet énoncé à la disposition 6 du paragraphe 1 (2);

6. prescrire les personnes qui peuvent représenter des enfants et leurs parents afin d'aider les fournisseurs de services à tenir compte de l'ensemble des caractéristiques et besoins d'un enfant, et de tous les autres facteurs visés aux sous-dispositions 3 iii et iv et aux dispositions 4 et 6 du paragraphe 1 (2) pour réaliser les objets énoncés à ces sous-dispositions et fonctions en tant que représentants;

7. prescrire la marche à suivre et les conditions d'admissibilité relatives à l'admission d'enfants et d'autres personnes dans les lieux où sont fournis des services et à leur mise en congé;

8. régir le placement en établissement d'enfants et prescrire les marches à suivre applicables aux placements, aux mises en congé, aux évaluations et à la gestion de cas;

9. exiger que les placements en établissement effectués par les fournisseurs de services, ou auprès d'eux, soient conformes à des ententes écrites, et prescrire la forme et le contenu de ces ententes;

10. prescrire les qualités requises, les pouvoirs et les fonctions des personnes qui participent à la prestation de services;

11. prescrire les catégories de personnes participant ou devant participer à la prestation de services qui doivent suivre une formation et prescrire cette formation ainsi que les circonstances dans lesquelles elle doit être suivie;

12. prescrire les services médicaux et autres se rapportant aux soins et traitements offerts aux enfants et à d'autres personnes, ou les services accessoires à ces soins et traitements, qui doivent être fournis dans les lieux où sont fournis des services, et exiger qu'ils le soient;

13. permettre que les avis, ordres, arrêts, ordonnances et autres documents qui, en application de la présente loi, doivent être remis par écrit soient plutôt remis sur support électronique ou sous une autre forme, sous réserve des conditions ou restrictions précisées;

14. régir le mode de remise ou de signification des avis, ordres, arrêts, ordonnances et autres documents ou choses en application de la présente loi, notamment prévoir les règles régissant le moment où ceux-ci sont réputés reçus;

15. prescrire des formulaires et prévoir les modalités de leur emploi;

16. modifier toute disposition ou exigence de la présente loi ou des règlements pour répondre aux besoins des personnes handicapées au sens de la *Loi de 2005 sur l'accessibilité pour les personnes handicapées de l'Ontario*.

## Règlements : Partie II (Droits des enfants et des adolescents)

317 Pour l'application de la partie II, le lieutenant-gouverneur en conseil peut, par règlement :

1. régir la manière dont les fournisseurs de services doivent respecter les droits des enfants et des adolescents énoncés dans la présente loi et en faire la promotion;

1.1 prescrire des intervalles pour l'application de l'article 8;

2. régir le protocole interne applicable à la présentation de plaintes qui doit être mis au point en application de l'article 17;

3. élaborer des règles d'examen en vertu de l'article 18;

4. prescrire une méthode de règlement extrajudiciaire des différends pour l'application du paragraphe 16 (1) ainsi qu'un processus de règlement extrajudiciaire des différends autre que celui établi par les bandes et les communautés et visé au paragraphe 16 (2) pour l'application de ce paragraphe.

## Règlements : Partie III (Financement et responsabilisation)

### Règlements du ministre

318 (1) Pour l'application de la partie III, le ministre peut, par règlement :



- a) un examen de l'autre objet de la Loi énoncé à la disposition 6 du paragraphe 1 (2), afin d'évaluer les progrès qui ont été accomplis en collaboration avec les Premières Nations, les Inuits et les Métis en vue de réaliser cet objet;
- b) un examen des dispositions imposant des obligations aux sociétés lorsqu'elles fournissent des services à une personne inuite, métisse ou de Premières Nations ou des dispositions concernant des enfants inuits, métis ou de Premières Nations, afin d'assurer que les sociétés se conforment à ces dispositions.

### Examen abordant les questions touchant les Premières Nations, les Inuits et les Métis

### 315 Chaque examen de la présente loi aborde les questions suivantes :

1. L'autre objet de la Loi énoncé à la disposition 6 du paragraphe 1 (2), afin d'évaluer les progrès qui ont été accomplis en collaboration avec les Premières Nations, les Inuits et les Métis en vue de réaliser cet objet.
2. Les dispositions imposant des obligations aux sociétés lorsqu'elles fournissent des services à une personne inuite, métisse ou de Premières Nations ou des dispositions concernant des enfants inuits, métis ou de Premières Nations, afin d'assurer que les sociétés se conforment à ces dispositions.

## PARTIE XII RÈGLEMENTS

### Dispositions générales

### Règlements du lieutenant-gouverneur en conseil

### 316 (1) Pour l'application de la présente loi, le lieutenant-gouverneur en conseil peut, par règlement :

- prescrire et régir un mode de règlement des différends, conformément au principe de Jordan, pour résoudre les différends intergouvernementaux et intragouvernementaux à l'égard des services fournis sous le régime de la présente loi;

- prescrire d'autres services comme étant des services au sens de la présente loi;

- prescrire les pouvoirs et fonctions supplémentaires des directeurs et des superviseurs de programme;

- prescrire d'autres personnes et entités comme étant des fournisseurs de services;

- régir l'utilisation de la contention physique sous le régime de la présente loi, notamment prescrire des normes et des protocoles applicables à son utilisation, exiger des fournisseurs de services qu'ils élaborent des politiques régissant son utilisation, et prescrire les dispositions qui doivent être incluses dans ces politiques et celles qui ne peuvent pas l'être;

- régir l'utilisation de contentions mécaniques sous le régime de la présente loi, notamment prescrire des normes et des protocoles applicables à leur utilisation;

- prescrire et régir, d'une part, un protocole interne applicable à la présentation de plaintes aux fournisseurs de services, à l'exception des plaintes visées à l'article 17 ou 116 et, d'autre part, un examen externe par une entité déterminée de catégories déterminées de plaintes;

- soustraire un fournisseur de services, un organisme responsable ou un service, ou une catégorie de ceux-ci, à l'application d'une disposition ou d'une exigence de la présente loi ou des règlements pendant une ou plusieurs périodes déterminées;

- définir tout terme utilisé dans la présente loi qui n'y est pas déjà défini et préciser davantage le sens d'un terme utilisé dans la présente loi qui y est déjà défini;

- prescrire ou prévoir autrement tout ce que la présente loi exige ou permet de prescrire ou de prévoir autrement dans les règlements, y compris régir tout ce qui doit ou peut être accompli conformément aux règlements, qui n'est pas déjà prévu par la présente partie, à l'exception de ce qui est prévu par ailleurs à la disposition 1 du paragraphe 324 (2);

- régir les questions transitoires pouvant découler de l'édiction de la présente loi ou de l'abrogation de l'ancienne loi.

### Incompatibilité

- (2) Les règlements pris en vertu de la disposition 10 du paragraphe (1) l'emportent sur toute disposition incompatible de la présente loi ou des règlements.

### Règlements du ministre

- (3) Pour l'application de la présente loi, le ministre peut, par règlement :

- prescrire des normes et mesures de rendement à l'égard de la prestation de services à des enfants recevant des soins, y compris prescrire un processus pour établir la nature des normes et mesures de rendement, et mettre en oeuvre les normes et mesures de rendement prescrites;

- régir l'établissement des bandes et des communautés inuites, métisses ou de Premières Nations auxquelles un enfant inuit, métis ou de Premières Nations s'identifie;



(2) La Commission se compose du nombre prescrit de membres nommés par le lieutenant-gouverneur en conseil et elle a les pouvoirs et les fonctions que lui attribuent la présente loi et les règlements.

**Président et vice-présidents**

(3) Le lieutenant-gouverneur en conseil peut nommer un membre de la Commission à la présidence et un ou plusieurs membres à la vice-présidence.

**Quorum**

(4) Le nombre prescrit de membres de la Commission constitue le quorum.

**Rémunération**

(5) Le président, les vice-présidents et les autres membres de la Commission reçoivent la rémunération que fixe le lieutenant-gouverneur en conseil. Ils ont droit au remboursement des frais de déplacement et de séjour raisonnables qu'ils doivent nécessairement engager lorsqu'ils assistent à des réunions ou participent d'une autre façon aux travaux de la Commission.

**Vérifications de dossiers de police**

312 Le lieutenant-gouverneur en conseil peut, par règlement, exiger des personnes suivantes qu'elles fournissent une vérification de dossier de police les concernant à toute autre personne ou à tout organisme conformément aux règlements :

1. La personne qui fournit ou reçoit des services sous le régime de la présente loi.
2. La personne qui réside dans les locaux où des services sont fournis ou reçus sous le régime de la présente loi, y est employée ou y fait du bénévolat.
3. Toute autre personne prescrite.

**Demande de vérifications de dossiers de police**

313 Une société peut demander à la Police provinciale de l'Ontario, à un corps de police municipal ou à une entité prescrite de procéder à des vérifications de dossiers de police ou de lui fournir d'autres renseignements prescrits en vue d'exercer les fonctions visées au paragraphe 34(1).

**Demande de vérifications de dossiers de police**

313 Une société peut, dans les circonstances prescrites ou à une fin prescrite, demander à la Police provinciale de l'Ontario, à un corps de police municipal ou à une entité prescrite de procéder à des vérifications de dossiers de police ou de lui fournir d'autres renseignements prescrits.

**Examen de la Loi**

314 (1) Le ministre examine périodiquement la présente loi ou les dispositions de celle-ci qu'il précise.

**Début de l'examen**

(2) Le ministre informe le public de la date de début de l'examen prévu au présent article et des dispositions de la présente loi qui font l'objet de l'examen.

**Consultation auprès d'enfants et d'adolescents**

(2.1) Le ministre consulte des enfants et des adolescents lorsqu'il effectue un examen en application du présent article.

**Rapport écrit**

(3) Le ministre prépare un rapport écrit sur un rapport écrit, dans un langage clair, sur l'examen, y compris les questions visées aux articles 314.1 et 315, et le met à la disposition du public.

**Période d'examen**

(4) Le premier examen est mené à terme et le rapport mis à la disposition du public dans les cinq ans du jour de l'entrée en vigueur du présent article.

**Examens subséquents**

(5) Chaque examen subséquent est mené à terme et le rapport mis à la disposition du public dans les cinq ans du jour de la mise à disposition du rapport de l'examen précédent.

**Examen abordant les droits des enfants et des adolescents**

314.1 Chaque examen de la présente loi aborde les droits des enfants et des adolescents énumérés à la partie II.

**Examen : questions touchant les Premières Nations, les Inuits et les Métis**

315 Chaque examen de la présente loi doit comprendre :

(d) élimine un dossier de renseignements personnels dont le fournisseur de services a la garde ou le contrôle dans l'intention de se soustraire à une demande d'accès au dossier que le fournisseur a reçue en vertu du paragraphe 304 (1);

(e) élimine volontairement un dossier de renseignements personnels en contravention à l'article 302;

(f) omet volontairement de se conformer à l'alinéa 301 (2) a);

(g) entrave volontairement le commissaire ou une personne que l'on sait agir sous son autorité dans l'exercice de ses fonctions relativement à la présente partie;

(h) fait volontairement une fausse déclaration afin d'induire ou de tenter d'induire en erreur le commissaire ou une personne que l'on sait agir sous son autorité dans l'exercice de ses fonctions relativement à la présente partie;

(i) omet volontairement de se conformer à une ordonnance rendue par le commissaire ou par une personne que l'on sait agir sous son autorité relativement à la présente partie;

(j) contrevient à l'article 308.

## Peine

(2) Quiconque est coupable d'une infraction prévue au paragraphe (1) est passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$.

## Dirigeants et autres personnes

(3) Si une personne morale commet une infraction à la présente partie, chacun de ses dirigeants, membres, employés ou mandataires qui a autorisé l'infraction ou qui avait le pouvoir de l'empêcher mais s'est sciemment abstenu de le faire est partie à l'infraction, en est coupable et est passible, sur déclaration de culpabilité, de la peine prévue pour l'infraction, que la personne morale ait été ou non poursuivie ou déclarée coupable.

## Interdiction de poursuivre

(4) Nul n'est passible de poursuite relativement à une infraction à la présente loi ou à toute autre loi pour s'être conformé à une exigence du commissaire relativement à la présente partie.

## Consentement du procureur général

(5) Aucune poursuite relativement à une infraction prévue au paragraphe (1) ne doit être intentée sans le consentement du procureur général.

## Juge qui préside

(6) La Couronne peut, par avis au greffier de la Cour de justice de l'Ontario, exiger qu'un juge provincial préside une instance relative à une infraction prévue au paragraphe (1).

## Protection des renseignements

(7) Dans le cadre d'une poursuite intentée relativement à une infraction prévue au paragraphe (1) ou si des documents sont déposés auprès d'un tribunal en application des articles 158 à 160 de la *Loi sur les infractions provinciales* en ce qui concerne une enquête sur une infraction à la présente partie, le tribunal peut, à tout moment, prendre des précautions pour éviter qu'une personne ou lui-même ne divulgue des renseignements personnels. Il peut notamment :

a) retirer les renseignements identifiatoires concernant une personne dont les renseignements personnels sont visés dans un document;

b) recevoir des observations sans préavis;

c) tenir tout ou partie des audiences à huis clos;

d) mettre sous scellé tout ou partie des dossiers du greffe.

## Aucune prescription

(8) L'article 76 de la *Loi sur les infractions provinciales* ne s'applique pas à une poursuite intentée en application de la présente partie.

## PARTIE XI

### DISPOSITIONS DIVERSES

## Commission de révision des services à l'enfance et à la famille

311 (1) La Commission de révision des services à l'enfance et à la famille est prorogée sous le nom de Commission de révision des services à l'enfance et à la famille en français et de Child and Family Services Review Board en anglais.

**Représailles interdites**

**308** Nul ne doit congédier, suspendre, rétrograder, punir ou harceler une personne ou lui faire subir tout autre désavantage pour l'un ou l'autre des motifs suivants :

- a) la personne, agissant de bonne foi et se fondant sur des motifs raisonnables, a divulgué au commissaire qu'une autre personne a contrevenu à une disposition de ~~la présente loi~~ ou des règlements ou est sur le point de le faire;

- b) la personne, agissant de bonne foi et se fondant sur des motifs raisonnables, a accompli ou fait part de son intention d'accomplir tout acte nécessaire pour empêcher une personne de contrevenir à une disposition de ~~la présente loi~~ la présente partie ou des règlements;

- c) la personne, agissant de bonne foi et se fondant sur des motifs raisonnables, a refusé d'accomplir ou fait part de son intention de refuser d'accomplir tout acte qui est en contravention à une disposition de ~~la présente loi~~ la présente partie ou des règlements;

- d) quelqu'un croit que la personne accomplira un des actes visés à l'alinéa a), b) ou c).

**Immunité**

**309 (1)** Sont irrecevables les actions ou autres instances en dommages-intérêts introduites contre un fournisseur de services ou toute autre personne :

- a) soit pour tout ce qui a été fait, relaté ou dit, de bonne foi et raisonnablement dans les circonstances, dans l'exercice effectif ou censé tel des pouvoirs ou fonctions que lui attribue la présente partie;
- b) soit pour toute négligence ou tout manquement qui était raisonnable dans les circonstances et qu'il aurait commis dans l'exercice de bonne foi des pouvoirs ou fonctions que lui attribue la présente partie.

**Responsabilité de la Couronne**

(2) Malgré les paragraphes 5 (2) et (4) de la *Loi sur les instances introduites contre la Couronne*, le paragraphe (1) du présent article ne dégage pas la Couronne de la responsabilité qu'elle serait autrement tenue d'assumer à l'égard d'un délit civil commis par une personne visée au paragraphe (1).

**Mandatatoire spécial**

(3) La personne qui, au nom ou à la place d'un particulier, donne, refuse ou retire son consentement à la collecte, à l'utilisation ou à la divulgation de renseignements personnels concernant le particulier, ou qui présente une demande, donne une consigne ou prend une mesure quelconque n'est pas responsable des dommages qui en résultent si elle agit raisonnablement dans les circonstances, de bonne foi et conformément à ~~la présente loi~~ la présente partie et aux règlements.

**Droit de présumer de l'exactitude**

(4) À moins qu'il ne soit pas raisonnable de le faire dans les circonstances, une personne a le droit de présumer exacte une affirmation faite par une autre personne concernant la collecte, l'utilisation ou la divulgation des renseignements, ou l'accès à ceux-ci, en application de ~~la présente loi~~ la présente partie et selon laquelle l'autre personne, selon le cas :

- a) soit est autorisée à présenter une demande d'accès à un dossier de renseignements personnels en vertu du paragraphe 304 (1);

- b) soit est autorisée en vertu du paragraphe 296 (1), (2) ou (4) à consentir à la collecte, à l'utilisation ou à la divulgation de renseignements personnels concernant un autre particulier.

**Infractions**

**310 (1)** Est coupable d'une infraction quiconque, selon le cas :

- a) recueille, utilise ou divulgue volontairement des renseignements personnels en contravention à la présente partie ou aux règlements pris pour l'application de la présente partie;
- b) présente sous de faux prétextes, en vertu de la présente loi, une demande d'accès à un dossier de renseignements personnels ou de rectification d'un tel dossier;

- c) relativement à la collecte, à l'utilisation ou à la divulgation de renseignements personnels, ou à l'accès à un dossier de tels renseignements, fait une affirmation qu'il sait n'être pas véridique et selon laquelle, selon le cas :

- (i) soit il est autorisé à consentir à la collecte, à l'utilisation ou à la divulgation de renseignements personnels concernant un autre particulier,

- (ii) soit il a le droit d'avoir accès à un dossier de renseignements personnels en vertu de l'article 303;



**Délégation par le commissaire**

**307.11** (1) Le commissaire peut, par écrit, déléguer l'un ou l'autre des pouvoirs ou fonctions que lui attribue la présente partie, y compris le pouvoir de rendre des ordonnances, à un de ses fonctionnaires ou employés ou à un commissaire adjoint.

**Subdélégation par le commissaire adjoint**

(2) L'un commissaire adjoint peut, par écrit, déléguer l'un ou l'autre des pouvoirs ou fonctions qui lui ont été délégués en vertu du paragraphe (1) à d'autres fonctionnaires ou employés du commissaire, sous réserve des conditions et restrictions qu'il précise dans l'acte de délégation.

**Restrictions : renseignements personnels**

**307.12** (1) Le commissaire et quiconque agit sous son autorité ne peuvent recueillir, utiliser ou conserver des renseignements personnels dans l'exercice des fonctions que leur attribue la présente partie que si aucun autre renseignement ne peut servir aux fins de la collecte, de l'utilisation ou de la conservation de ces renseignements et dans aucune autre circonstance.

**Quantité de renseignements**

(2) Le commissaire et quiconque agit sous son autorité ne doivent pas, dans l'exercice des fonctions que leur attribue la présente partie, recueillir, utiliser ou conserver plus de renseignements personnels qu'il n'est raisonnablement nécessaire pour permettre au commissaire d'exercer ses fonctions liées à la présente partie ou aux fins d'une instance introduite en vertu de celle-ci.

**Confidentialité**

(3) Le commissaire et quiconque agit sous son autorité ne doivent pas divulguer les renseignements qui sont portés à leur connaissance dans l'exercice des fonctions que leur attribue la présente partie, sauf si, selon le cas :

- a) la divulgation est exigée pour l'exercice de ces fonctions;
- b) les renseignements se rapportent à un fournisseur de services, la divulgation est faite à une entité qui a légalement le droit de réglementer ou d'examiner les activités du fournisseur de services et le commissaire ou un commissaire adjoint est d'avis que la divulgation est justifiée;
- c) le commissaire a obtenu les renseignements en application du paragraphe 307.4 (12) et la divulgation est exigée dans une poursuite pour infraction à l'article 131 du *Code criminel* (Canada) à l'égard d'un témoignage sous serment;
- d) la divulgation est faite au procureur général, les renseignements se rapportent à la commission d'une infraction à une loi ou à une loi du Canada et le commissaire est d'avis qu'il existe une preuve de l'infraction.

**Idem**

(4) Malgré le paragraphe (3), le commissaire et quiconque agit sous son autorité ne doivent pas divulguer l'identité d'une personne, sauf un plaignant visé au paragraphe 307 (1), qui a fourni des renseignements au commissaire et qui lui a demandé de garder son identité confidentielle, à moins que la divulgation soit nécessaire pour assurer la conformité à l'article 122 (obligation de déclarer le besoin de protection).

**Renseignements : examen ou instance**

(5) Le commissaire, dans un examen visé à l'article 307.1 ou 307.2, et un tribunal judiciaire ou administratif ou une autre personne, notamment le commissaire, dans une instance visée à l'article 307.9 ou au présent article, prennent toutes les précautions raisonnables afin d'éviter la divulgation de renseignements à l'égard desquels un fournisseur de services a le droit de refuser une demande d'accès présentée en vertu de l'article 304. Ces précautions peuvent comprendre, lorsque cela est approprié, la réception d'observations sans préavis et la tenue d'audiences à huis clos.

**Témoins non contraignables**

(6) Le commissaire et quiconque agit sous son autorité ne sont pas tenus de témoigner devant un tribunal ou lors d'une instance de nature judiciaire relativement à ce qui est porté à leur connaissance dans l'exercice des fonctions que leur attribue la présente partie et qu'il leur est interdit de divulguer en application du paragraphe (3) ou (4).

**Immunité**

**307.13** Sont irrecevables les actions ou autres instances en dommages-intérêts introduites contre le commissaire ou quiconque agit sous son autorité :

- a) soit pour tout ce qui a été fait, relaté ou dit de bonne foi et dans l'exercice effectif ou censé tel des pouvoirs ou fonctions que leur attribue la présente partie;
- b) soit pour toute négligence ou tout manquement qu'ils auraient commis dans l'exercice de bonne foi des pouvoirs ou fonctions que leur attribue la présente partie.

## Exécution de l'ordonnance

**307.7** L'ordonnance rendue par le commissaire en vertu de la présente partie et devenue définitive en raison de l'absence de tout droit d'appel additionnel peut être déposée auprès de la Cour supérieure de justice. Un tel dépôt lui confère le même caractère exécutoire qu'un jugement ou une ordonnance de ce tribunal.

## Nouvelle ordonnance du commissaire

**307.8** (1) Après avoir effectué un examen en vertu de l'article 307.1 ou 307.2 et rendu une ordonnance en vertu du paragraphe 307.5 (1), le commissaire peut annuler ou modifier l'ordonnance ou en rendre une nouvelle en vertu de ce paragraphe s'il prend connaissance de nouveaux faits se rapportant à l'objet de l'examen ou s'il survient un changement important dans les circonstances entourant cet objet.

## Circonstances

(2) Le commissaire peut exercer les pouvoirs visés au paragraphe (1) même si l'ordonnance qu'il annule ou modifie a été déposée auprès de la Cour supérieure de justice en vertu de l'article 307.7.

## Copie de l'ordonnance

(3) Lorsqu'il rend une nouvelle ordonnance en vertu du paragraphe (1), le commissaire en remet une copie aux personnes ou entités visées aux alinéas 307.5 (3) a) à e) et y joint un avis indiquant ce qui suit :

a) les motifs sur lesquels il s'est fondé pour rendre l'ordonnance;

b) si l'ordonnance a été rendue en vertu de l'un ou l'autre des alinéas 307.5 (1) c) à h), une déclaration selon laquelle les personnes visées par l'ordonnance disposent du droit d'appel visé au paragraphe (4).

## Appel

(4) La personne visée par une ordonnance qu'annule, modifie ou rend le commissaire en vertu de l'un ou l'autre des alinéas 307.5 (1) c) à h) peut en interjeter appel devant la Cour divisionnaire sur une question de droit conformément aux règles de pratique en déposant un avis d'appel dans les 30 jours qui suivent la réception d'une copie de l'ordonnance. Les paragraphes 307.6 (2) à (5) s'appliquent alors à l'appel.

## Domages-intérêts pour violation de la vie privée

**307.9** (1) Si le commissaire a, en vertu de la présente partie, rendu une ordonnance qui est devenue définitive en raison de l'absence de tout droit d'appel additionnel, une personne qu'elle vise peut introduire devant la Cour supérieure de justice une instance en recouvrement de dommages-intérêts pour le préjudice réel qu'elle a subi par suite d'une contravention à la présente partie ou aux règlements.

## Idem

(2) Si une personne a été reconnue coupable d'une infraction à la présente partie et que la déclaration de culpabilité est devenue définitive en raison de l'absence de tout droit d'appel additionnel, une personne touchée par la conduite qui a donné lieu à l'infraction peut introduire devant la Cour supérieure de justice une instance en recouvrement de dommages-intérêts pour le préjudice réel qu'elle a subi du fait de la conduite.

## Domages moraux

(3) Si, dans une instance visée au paragraphe (1) ou (2), la Cour supérieure de justice établit que le préjudice subi par le demandeur a été causé par une contravention ou une infraction, selon le cas, que les défendeurs ont commise volontairement ou avec insouciance, le tribunal peut inclure dans les dommages-intérêts qu'il adjuge des dommages moraux.

## Pouvoirs généraux du commissaire

**307.10** Le commissaire peut faire ce qui suit :

a) entreprendre ou commander des recherches sur les questions qui ont une incidence sur la réalisation des objets de la présente partie;

b) instituer des programmes d'information du public et fournir des renseignements relatifs à la présente partie ainsi qu'au rôle et aux activités du commissaire;

c) recevoir les observations du public relativement à l'application de la présente partie;

d) sur demande d'un fournisseur de services, présenter des commentaires sur les pratiques relatives aux renseignements qu'a adoptés ou proposés le fournisseur de services;

e) apporter son aide lors d'enquêtes qu'effectue ou de mesures semblables que prend quiconque exerce des fonctions semblables aux siennes en application des lois du Canada sauf que, lorsqu'il fournit une aide, il ne doit ni utiliser ni divulguer de renseignements qu'il a recueillis ou qui ont été recueillis pour lui en vertu de la présente partie;

f) dans des circonstances appropriées, autoriser la collecte de renseignements personnels autrement que directement auprès du particulier qu'ils concernent.



- (g) par ordonnance, enjoindre à tout fournisseur de services dont il a examiné les activités de mettre en oeuvre les pratiques relatives aux renseignements que le commissaire précise, si ces pratiques sont, selon lui, raisonnablement nécessaires pour assurer la conformité à la présente partie et aux règlements;
- (h) par ordonnance, enjoindre à quiconque est un mandataire ou un employé d'un fournisseur de services dont il a examiné les activités et à qui une ordonnance rendue en vertu d'un des alinéas a) à g) enjoint de prendre ou non une mesure, de prendre ou non la mesure s'il est, selon lui, nécessaire de rendre l'ordonnance contre le mandataire ou l'employé pour faire en sorte que le fournisseur de services se conforme à l'ordonnance rendue contre lui;
- (i) présenter des commentaires et des recommandations sur l'incidence qu'ont sur la vie privée les questions qui font l'objet de l'examen.

#### Conditions de l'ordonnance

- (2) L'ordonnance que rend le commissaire en vertu du paragraphe (1) peut contenir les conditions qu'il estime appropriées.

#### Copie de l'ordonnance

- (3) Le commissaire remet aux personnes et entités suivantes une copie des commentaires ou des recommandations qu'il présente ou des ordonnances qu'il rend en vertu du paragraphe (1), y compris les motifs de l'ordonnance :

- a) le plaignant et la personne qui fait l'objet de la plainte, s'il a présenté les commentaires ou les recommandations ou rendu l'ordonnance après avoir examiné une plainte en vertu de l'article 307.1;

- b) la personne dont il a examiné les activités, s'il a présenté les commentaires ou les recommandations ou rendu l'ordonnance après avoir effectué un examen en vertu de l'article 307.2;

- c) toutes les autres personnes auxquelles s'adresse l'ordonnance;

- d) l'entité ou les entités qui ont légalement le droit de réglementer ou d'examiner les activités du fournisseur de services auquel s'adresse l'ordonnance ou auquel se rapportent les commentaires ou les recommandations;

- e) toute autre personne qu'il estime appropriée.

#### Aucune ordonnance

- (4) S'il ne rend pas d'ordonnance en vertu du paragraphe (1) après avoir effectué un examen en vertu de l'article 307.1 ou 307.2, le commissaire donne au plaignant, le cas échéant, et à la personne dont il a examiné les activités un avis indiquant les motifs sur lesquels il s'est fondé pour ne pas rendre d'ordonnance.

#### Appel d'une ordonnance

- 307.6 (1) La personne visée par une ordonnance que rend le commissaire en vertu de l'un ou l'autre des alinéas 307.5 (1) c) à h) peut en interjeter appel devant la Cour divisionnaire sur une question de droit conformément aux règles de pratique en déposant un avis d'appel dans les 30 jours qui suivent la réception d'une copie de l'ordonnance.

#### Certificat du commissaire

- (2) Dans le cadre d'un appel interjeté en vertu du présent article, le commissaire certifie ce qui suit à la Cour divisionnaire :
- a) l'ordonnance et un énoncé des motifs sur lesquels il s'est fondé pour la rendre;

- b) le dossier de toutes les audiences qu'il a tenues en effectuant l'examen sur lequel l'ordonnance est fondée;

- c) toutes les observations écrites qu'il a reçues avant de rendre l'ordonnance;

- d) tous les autres documents qu'il estime pertinents concernant l'appel.

#### Caractère confidentiel des renseignements

- (3) Dans le cadre d'un appel interjeté en vertu du présent article, le tribunal peut prendre des précautions afin d'éviter que lui-même ou une personne ne divulgue des renseignements personnels concernant un particulier, notamment, lorsque cela est approprié, la réception d'observations sans préavis, la tenue d'audiences à huis clos ou l'apposition d'un sceau sur les dossiers du greffe.

#### Ordonnance du tribunal

- (4) Lorsqu'il entend un appel en vertu du présent article, le tribunal peut, par ordonnance :

- a) enjoindre au commissaire de prendre les décisions et les mesures qu'il est autorisé à prendre en vertu de la présente partie et que le tribunal estime appropriées;

- b) si cela est nécessaire, modifier ou annuler l'ordonnance du commissaire.

#### Conformité

- (5) Le commissaire se conforme à l'ordonnance du tribunal.



**Restriction**  
(14) Malgré le paragraphe 307.11 (1), le pouvoir de prendre une décision en vertu de l'alinéa (13) a) et d'approuver le bref exposé écrit des motifs visé à l'alinéa (13) b) ne peut être délégué qu'à un commissaire adjoint.

**Documents privilégiés**  
(15) Les documents ou les choses que produit une personne au cours d'un examen sont privilégiés comme s'il s'agissait d'une instance devant un tribunal.

**Protection**  
(16) Sauf à l'occasion du procès d'une personne par suite d'un parjure au moment de son propre témoignage sous serment, aucune déclaration faite ou réponse donnée par cette personne au cours d'un examen effectué par le commissaire n'est admissible en preuve devant un tribunal, dans le cadre d'une enquête, ou au cours d'une instance. Aucun témoignage rendu en cours d'instance devant le commissaire ne peut servir de preuve contre qui que ce soit.

**Protection en vertu de la loi fédérale**  
(17) Le commissaire informe quiconque fait une déclaration ou donne une réponse au cours de l'examen qu'il effectue du droit que lui confère l'article 5 de la *Loi sur la preuve au Canada* de s'opposer à répondre à une question.

**Observations**  
(18) Le commissaire donne à la personne qui a porté plainte, à celle qui fait l'objet de la plainte et à toute autre personne intéressée l'occasion de lui présenter des observations.

**Représentant**  
(19) La personne à qui est donnée l'occasion de présenter des observations au commissaire peut être représentée par un avocat ou par une autre personne.

**Accès aux observations**  
(20) Le commissaire peut permettre à une personne d'être présente lors de la présentation d'observations devant lui par une autre personne ou d'avoir accès à ces observations, sauf si cela risquerait de révéler :

a) la teneur d'un dossier de renseignements personnels au sujet duquel un fournisseur de services invoque son droit de rejeter une demande d'accès présentée en vertu de l'article 304;

b) des renseignements personnels auxquels un particulier n'a pas le droit de demander accès en vertu de l'article 304.

**Attestation de la nomination**  
(21) Si le commissaire ou un commissaire adjoint a délégué les pouvoirs que lui confère le présent article à un des fonctionnaires ou employés du commissaire, le fonctionnaire ou l'employé qui exerce ces pouvoirs présente, sur demande, le certificat de délégation signé par le commissaire ou le commissaire adjoint, selon le cas.

**Pouvoirs du commissaire**  
307.5 (1) Après avoir effectué un examen en vertu de l'article 307.1 ou 307.2, le commissaire peut :

a) si l'examen se rapporte à une plainte au sujet d'une demande d'accès à un dossier de renseignements personnels qu'a présentée un particulier en vertu du paragraphe 304 (1), rendre une ordonnance enjoignant au fournisseur de services faisant l'objet de la plainte de donner au particulier l'accès au dossier demandé;

b) si l'examen se rapporte à une plainte au sujet d'une demande de rectification d'un dossier de renseignements personnels qu'a présentée un particulier en vertu du paragraphe 306 (2), rendre une ordonnance enjoignant au fournisseur de services faisant l'objet de la plainte d'apporter la rectification demandée;

c) par ordonnance, enjoindre à toute personne dont il a examiné les activités de s'acquiescer d'une obligation imposée par la présente partie ou les règlements;

d) par ordonnance, enjoindre à toute personne dont il a examiné les activités de cesser de recueillir, d'utiliser ou de divulguer des renseignements personnels si, selon lui, elle le fait ou est sur le point de le faire contrairement à la présente partie ou aux règlements ou à un accord conclu en application de la présente partie;

e) par ordonnance, enjoindre à toute personne dont il a examiné les dossiers d'éliminer les dossiers de renseignements personnels qu'elle a, selon lui, recueillis, utilisés ou divulgués contrairement à la présente partie ou aux règlements ou à un accord conclu en application de la présente partie, mais uniquement s'il est raisonnable de s'attendre à ce que l'élimination de ces dossiers ne nuise pas à la prestation de services à un particulier;

f) par ordonnance, enjoindre à tout fournisseur de services dont il a examiné les activités de modifier, de cesser ou de ne pas mettre en oeuvre les pratiques relatives aux renseignements que le commissaire précise, si ces pratiques contraignent, selon lui, la présente partie ou aux règlements;

(e) examiner ou copier, dans les locaux où il a pénétré, les livres, dossiers ou documents que produit une personne, s'il paie les droits raisonnables que peut exiger le fournisseur de services ou la personne qui fait l'objet de l'examen pour recouvrer ses coûts.

#### **Accès à un logement**

(3) Le commissaire ne doit pas, sans le consentement de l'occupant, exercer le pouvoir de pénétrer dans un lieu utilisé comme logement, si ce n'est sous l'autorité d'un mandat de perquisition décerné en vertu du paragraphe (4).

#### **Mandat de perquisition**

(4) Le juge de paix qui est convaincu, sur la foi de témoignages recueillis sous serment ou affirmation solennelle, qu'il existe des motifs raisonnables de croire qu'il est nécessaire de pénétrer dans un lieu utilisé comme logement pour faire enquête sur une plainte qui fait l'objet d'un examen en vertu de l'article 307.1 ou 307.2 peut décerner un mandat autorisant la personne qui y est nommée à y pénétrer.

#### **Heures et manière d'accès**

(5) Le commissaire n'exerce le pouvoir de pénétrer dans des locaux que lui confère le présent article que pendant les heures raisonnables pour ces locaux et seulement de manière à ne pas entraver des services qui y sont fournis à quiconque à ce moment-là.

#### **Entrée interdite**

(6) Nul ne doit entraver le commissaire dans l'exercice des pouvoirs que lui confère le présent article ni lui fournir des renseignements faux ou trompeurs.

#### **Demande écrite**

(7) La demande de livres, de dossiers ou de documents ou de copies d'extraits de ceux-ci visée au paragraphe (2) doit être formulée par écrit et comprendre un énoncé de la nature de ce qui doit être produit.

#### **Aide obligatoire**

(8) Si le commissaire exige la production d'une chose en vertu du paragraphe (2), quiconque en a la garde la produit et, dans le cas d'un document, lui fournit, sur demande, l'aide qui est raisonnablement nécessaire pour le produire sous une forme lisible, en recourant notamment à un dispositif ou système de stockage, de traitement ou de récupération des données.

#### **Enlèvement de documents**

(9) Si une personne produit des livres, des dossiers ou d'autres documents à son intention, sauf ceux nécessaires à la prestation courante de services à quiconque, le commissaire peut, après avoir donné un récépissé écrit à cet effet, les enlever et les examiner ou les copier, s'il n'est pas en mesure de le faire dans les locaux où il a pénétré.

#### **Remise des documents**

(10) Le commissaire examine ou copie les documents avec une diligence raisonnable et les remet promptement après l'avoir fait à la personne qui les a produits.

#### **Admissibilité des copies**

(11) La copie que le commissaire certifie comme étant une copie est admissible en preuve au même titre que l'original et a la même valeur probante que lui.

#### **Réponses données sous serment**

(12) Le commissaire qui effectue un examen en vertu de l'article 307.1 ou 307.2 peut, au moyen d'une assignation, de la même façon et dans la même mesure qu'une cour supérieure d'archives, exiger la comparution d'une personne devant lui et l'obliger à témoigner par écrit ou oralement sous serment ou affirmation solennelle.

#### **Inspection d'un dossier sans consentement**

(13) Malgré les paragraphes (2) et (12), le commissaire ne doit pas inspecter un dossier de renseignements personnels, en exiger la preuve ou s'informer à son égard sans le consentement du particulier que concernent les renseignements, sauf si :

a) d'une part, il décide d'abord qu'il est raisonnablement nécessaire de le faire, sous réserve des conditions ou restrictions qu'il précise, notamment l'établissement d'un délai, afin d'effectuer l'examen et que l'intérêt public justifie de passer outre à l'obligation d'obtenir le consentement du particulier dans les circonstances;

b) d'autre part, il fournit à la personne qui a la garde ou le contrôle du dossier devant être inspecté, ou de la preuve ou des renseignements devant faire l'objet de l'enquête, une déclaration énonçant la décision qu'il a prise en application de l'article 307.1, accompagnée d'un bref exposé écrit des motifs sur lesquels il s'est fondé pour le faire, ainsi que les restrictions et les conditions qu'il a précisées, le cas échéant.



**Aucun examen**

(4) Le commissaire peut décider de ne pas examiner l'objet de la plainte pour tout motif qu'il estime approprié, y compris s'il est convaincu que, selon le cas :

- a) la personne faisant l'objet de la plainte y a répondu adéquatement;
- b) la plainte a été traitée ou pourrait l'être de façon plus appropriée, au début ou en totalité, au moyen d'une procédure, autre qu'une plainte portée en vertu de la présente partie;
- c) le temps qui s'est écoulé entre la date à laquelle l'objet de la plainte a pris naissance et la date où il a été porté plainte est tel que l'examen prévu au présent article causerait vraisemblablement un préjudice indu à quiconque;
- d) le plaignant n'a pas un intérêt personnel suffisant dans l'objet de la plainte;
- e) la plainte est triviale ou vexatoire ou est portée de mauvaise foi.

**Avis**

(5) Lorsqu'il décide de ne pas examiner l'objet d'une plainte, le commissaire en avise le plaignant et précise le motif de sa décision dans son avis.

**Idem**

(6) Lorsqu'il décide d'examiner l'objet d'une plainte, le commissaire en avise la personne faisant l'objet de la plainte.

**Examen à l'initiative du commissaire**

307.2 (1) Le commissaire peut, de sa propre initiative, examiner toute question s'il a des motifs raisonnables de croire qu'une personne a contrevenu ou est sur le point de contrevenir à une disposition de la présente partie ou des règlements et que l'objet de l'examen se rapporte à la contravention.

**Avis**

(2) Lorsqu'il décide d'effectuer un examen en vertu du présent article, le commissaire en avise chaque personne dont les activités seront examinées.

**Procédure relative à l'examen du commissaire**

307.3 (1) Le commissaire peut adopter les règles de procédure qu'il estime nécessaires lorsqu'il effectue un examen en vertu de l'article 307.1 ou 307.2. La Loi sur l'exercice des compétences légales ne s'applique pas à l'examen.

**Preuve**

(2) Lorsqu'il effectue un examen en vertu de l'article 307.1 ou 307.2, le commissaire peut recevoir et accepter les éléments de preuve et autres renseignements qu'il estime appropriés, qu'ils soient présentés sous serment, par affidavit ou autrement et qu'ils soient ou seraient admissibles ou non devant un tribunal judiciaire.

**Pouvoirs d'inspection**

307.4 (1) Le commissaire qui effectue un examen en vertu de l'article 307.1 ou 307.2 peut, sans mandat ni ordonnance d'un tribunal, pénétrer dans des locaux et les inspecter conformément au présent article si les conditions suivantes sont réunies :

- a) il a des motifs raisonnables de croire ce qui suit :
  - (i) la personne qui fait l'objet de la plainte ou dont les activités sont examinées utilise les locaux à une fin liée à l'objet de la plainte ou de l'examen, selon le cas,
  - (ii) les locaux contiennent des livres, des dossiers ou d'autres documents qui se rapportent à l'objet de la plainte ou de l'examen, selon le cas;
- b) il effectue l'inspection dans le but d'établir si la personne a contrevenu à une disposition de la présente partie ou des règlements ou est sur le point de le faire.

**Pouvoirs d'examen**

(2) Le commissaire qui effectue un examen en vertu de l'article 307.1 ou 307.2 peut :

- a) exiger la production de livres, de dossiers ou d'autres documents qui se rapportent à l'objet de l'examen ou des copies d'extraits de ceux-ci;
- b) s'informer de tous renseignements, dossiers, pratiques relatives aux renseignements qu'a adoptés un fournisseur de services ou autres questions qui se rapportent à l'objet de l'examen;
- c) exiger la production, aux fins de l'inspection, de toute chose visée à l'alinéa b);
- d) avoir recours à tout dispositif ou système de stockage, de traitement ou de récupération des données appartenant à la personne qui fait l'objet de l'enquête afin de produire un dossier sous une forme lisible à partir de livres, de dossiers ou d'autres documents qui se rapportent à l'objet de l'examen;



## Application de la Loi de 2004 sur la protection des renseignements personnels sur la santé

(1) Les articles 57 à 69 de la Loi de 2004 sur la protection des renseignements personnels sur la santé et les règlements pris en vertu des alinéas 73 (1) a), m), n.1) et p) de cette loi s'appliquent, avec les adaptations nécessaires, à la plainte visée au présent article.

### Idem

(5) Sans préjudice de la portée générale du paragraphe (1), les adaptations suivantes sont apportées aux articles 57 à 69 de la Loi de 2004 sur la protection des renseignements personnels sur la santé et aux règlements pris en vertu des alinéas 73 (1) a), m), n.1) et p) de cette loi, tels qu'ils s'appliquent à la plainte visée au présent article :

1. La mention de « renseignements personnels sur la santé » vaut mention de « renseignements personnels »;
2. La mention de « dépositaire de renseignements sur la santé » vaut mention de « fournisseur de services »;
3. La mention de « soins de santé » vaut mention de « services »;

4. La mention de « pratiques relatives aux renseignements » vaut mention de « politiques relatives à la collecte, à l'utilisation, à la modification, à la divulgation, à la conservation et à l'élimination de renseignements personnels et aux mesures de précaution et pratiques d'ordre administratif, technique et matériel que le fournisseur de services maintient à l'égard de ces renseignements »;

5. La mention de « la présente loi » vaut mention de « la présente partie »;

6. L'alinéa 61 (1) f) s'interprète comme suit :

f) par ordonnance, enjoindre à tout fournisseur de services dont il a examiné les activités de modifier, de cesser ou de ne pas mettre en œuvre une politique relative à la collecte, à l'utilisation, à la modification, à la divulgation, à la conservation et à l'élimination de renseignements personnels qu'il précise si celle-ci est, selon lui, contraire à la présente loi ou aux règlements;

7. L'alinéa 61 (1) h) s'interprète de manière à autoriser une ordonnance à l'égard d'une personne qui est le mandataire ou l'employé d'un fournisseur de services;

8. Le paragraphe 68 (1) s'interprète sans tenir compte de l'alinéa a);

9. L'alinéa 68 (1) b) s'interprète avec ce qui suit inséré à la fin de l'alinéa : « à moins que la divulgation soit nécessaire pour assurer la conformité à l'article 122 (obligation de déclarer le besoin de protection) »;

## Réponse du commissaire

307.1 (1) Lorsqu'il reçoit une plainte portée en vertu de la présente partie, le commissaire peut informer de la nature de la plainte la personne qui en fait l'objet et, selon le cas :

a) s'enquérir des moyens, à l'exclusion de la plainte, auxquels a ou a eu recours le plaignant pour régler l'objet de la plainte;

b) exiger du plaignant qu'il tente de parvenir à un règlement avec la personne faisant l'objet de la plainte dans le délai que précise le commissaire;

c) autoriser un médiateur à examiner la plainte et à tenter d'amener le plaignant et la personne faisant l'objet de la plainte à parvenir à un règlement dans le délai que précise le commissaire.

## Aucun effet sur les droits et obligations

(2) Si le commissaire prend une des mesures visées à l'alinéa (1) b) ou c), mais qu'aucun règlement n'intervient dans le délai précisé :

a) aucune des tractations entre les parties à la tentative de règlement ne doit porter atteinte aux droits et obligations que la présente partie leur attribue;

b) aucun des renseignements divulgués dans le cadre de cette tentative de règlement ne doit porter atteinte aux droits et obligations que la présente partie attribue aux parties;

c) aucun des renseignements divulgués dans le cadre de cette tentative de règlement qui sont assujettis à un privilège relatif à la médiation ne doit être utilisé ou divulgué à une autre fin, y compris l'examen d'une plainte effectué en vertu du présent article ou une inspection effectuée en vertu de l'article 307.4, à moins que toutes les parties y consentent expressément.

## Examen par le commissaire

(3) S'il ne prend aucune des mesures visées à l'alinéa (1) b) ou c) ou qu'il prend une mesure visée à l'un de ces alinéas, mais qu'aucun règlement n'intervient dans le délai précisé, le commissaire peut examiner l'objet d'une plainte portée en vertu de la présente partie s'il est convaincu qu'il existe des motifs raisonnables de le faire.

(i) d'une part, en consignnant les renseignements exacts dans le dossier ou, si cela est impossible, en veillant à ce qu'il y ait en place un système pratique à quiconque a accès au dossier de savoir que les renseignements qui y figurent sont inexacts ou incomplets et d'être dirigé vers les renseignements exacts,

(ii) d'autre part, en rayant les renseignements inexacts de manière à ne pas oblitérer le dossier ou, si cela est impossible, en identifiant les renseignements comme étant inexacts, en les séparant du dossier, en les stockant indépendamment de celui-ci et en y conservant un lien qui permette à une personne de retrouver les renseignements inexacts;

b) il avise le particulier de ce qui a été fait en application de l'alinéa a);

c) il avise par écrit de la rectification demandée, à la demande du particulier et dans la mesure où il est raisonnablement possible de le faire, les personnes à qui il a divulgué les renseignements à l'égard desquels le particulier a demandé la rectification du dossier, sauf s'il n'y a pas raisonnablement lieu de s'attendre à ce que la rectification puisse avoir des répercussions sur la prestation continue de services.

## Avis de rejet

(12) L'avis de rejet visé au paragraphe (4) ou (5) doit énoncer les motifs du rejet et informer le particulier qu'il a le droit de faire ce qui suit :

a) rédiger une déclaration de désaccord concise qui énonce la rectification que le fournisseur de services a refusé d'apporter;

b) exiger que le fournisseur de services verse la déclaration de désaccord aux dossiers de renseignements personnels qu'il détient à l'égard du particulier et qu'il la divulgue chaque fois qu'il divulgue des renseignements auxquels elle se rapporte;

c) exiger que le fournisseur de services fasse tous les efforts raisonnables pour divulguer la déclaration de désaccord à quiconque aurait été avisé en application de l'alinéa (11) c) si le fournisseur de services avait accédé à la demande de rectification;

d) porter plainte devant le commissaire en vertu de l'article 307 au sujet du rejet.

## Droits du particulier

(13) Si le fournisseur de services rejette tout ou partie d'une demande de rectification ou est réputé l'avoir fait, le particulier a le droit de prendre l'une quelconque des mesures énoncées au paragraphe (12).

## Obligation du fournisseur de services

(14) Si le particulier prend la mesure visée à l'alinéa (12) b) ou c), le fournisseur de services doit se conformer aux exigences visées à l'alinéa applicable.

## Aucuns droits exigibles pour la rectification

(15) Le fournisseur de services ne doit pas exiger de droits pour rectifier un dossier en application du présent article ou pour se conformer au paragraphe (14).

## PLAINTES, EXAMENS ET INSPECTIONS

## Dépôt d'une plainte auprès du commissaire

307 (1) Quiconque a des motifs raisonnables de croire qu'une autre personne a contrevenu, ou est sur le point de contrevenir, à une disposition de la présente partie ou aux règlements pris pour l'application de la présente partie peut porter plainte devant le commissaire.

## Délai de dépôt de la plainte

(2) La plainte visée au paragraphe (1) doit être faite par écrit et être déposée, selon le cas :

a) au plus tard un an après que l'objet de la plainte a été porté pour la première fois à l'attention du plaignant ou après qu'il aurait dû raisonnablement être porté à son attention, selon la plus courte de ces périodes;

b) dans le délai plus long qu'autorise le commissaire si celui-ci est convaincu que le nouveau délai ne cause aucun préjudice à qui que ce soit.

## Idem : demande rejetée

(3) La plainte visée à l'alinéa 305 (1) c) ou d), au paragraphe 305 (8), 306 (6) ou (8) ou à l'alinéa 306 (12) d) doit être faite par écrit et être déposée au plus tard six mois après que le fournisseur de services a rejeté ou est réputé avoir rejeté la demande du particulier.

## Rectification d'un dossier

### Interprétation

306 (1) Au présent article, la mention d'une rectification d'un dossier ou du fait de rectifier un dossier inclut l'ajout de renseignements ou le fait d'en ajouter afin de compléter le dossier.

### Demande écrite

(2) Un particulier peut demander par écrit au fournisseur de services de rectifier un dossier de renseignements personnels le concernant auquel le fournisseur lui a donné accès et qu'il croit inexact ou incomplet.

### Demande verbale

(3) Le présent article n'a pas pour effet d'empêcher le fournisseur de services, sur demande verbale du particulier, de rectifier le dossier.

### Délai

(4) Dès que possible, mais au plus tard 30 jours après avoir reçu la demande de rectification visée au paragraphe (2), le fournisseur de services, par avis écrit remis au particulier, accède à la demande, la rejette ou proroge le délai de réponse d'au plus 90 jours si, selon le cas :

a) le fait de répondre à la demande dans les 30 jours aurait pour effet d'entraver abusivement ses activités;

b) il ne serait pas raisonnablement possible de terminer à temps les consultations nécessaires pour répondre à la demande dans le délai de 30 jours.

### Prorogation du délai

(5) Le fournisseur de services qui proroge le délai en application du paragraphe (4) doit, par avis écrit remis au particulier :

a) d'une part, énoncer la durée du nouveau délai et les motifs de la prorogation;

b) d'autre part, accéder à la demande du particulier ou la rejeter dès que possible dans les circonstances, mais au plus tard à la fin du nouveau délai.

### Demande frivole ou vexatoire

(6) Le fournisseur de services qui a des motifs raisonnables de croire qu'une demande de rectification est frivole ou vexatoire ou est présentée de mauvaise foi peut refuser d'y accéder, auquel cas il remet au particulier un avis motivé à cet effet dans lequel il précise que le particulier a le droit de porter plainte à ce sujet devant le commissaire en vertu de l'article 307.

### Demande réputée rejetée

(7) Le fournisseur de services qui ne répond pas à une demande de rectification dans le délai imparti est réputé l'avoir rejetée.

### Droit de porter plainte

(8) Si le fournisseur de services rejette ou est réputé avoir rejeté tout ou partie de la demande :

a) d'une part, le particulier a le droit de porter plainte à ce sujet devant le commissaire en vertu de l'article 307;

b) d'autre part, dans la plainte, le fardeau de la preuve en ce qui concerne le rejet incombe au fournisseur de services.

### Obligation de rectifier

(9) Le fournisseur de services accède à la demande de rectification si le particulier le convainc que le dossier est inexact ou incomplet et qu'il lui fournit les renseignements nécessaires pour lui permettre de le rectifier.

### Exceptions

(10) Malgré le paragraphe (9), le fournisseur de services n'est pas tenu de rectifier un dossier de renseignements personnels si, selon le cas :

a) il n'est pas le premier créateur du dossier et il n'a pas les connaissances, les compétences ou le pouvoir nécessaires pour le rectifier;

b) le dossier consiste en une opinion ou une observation professionnelle faite de bonne foi au sujet du particulier.

### Manière d'effectuer une rectification

(11) Lorsqu'il accède à une demande de rectification, le fournisseur de services fait ce qui suit :

a) il apporte la rectification demandée ;



- (d) sous réserve du paragraphe (2), s'il rejette tout ou partie de la demande en vertu de l'alinéa 303 (1) c) ou d), il donne un avis écrit au particulier dans lequel il précise que le particulier a le droit de porter plainte à ce sujet devant le commissaire en vertu de l'article 307 et que, selon le cas :

- (i) il rejette tout ou partie de la demande, tout en énonçant lequel des alinéas 303 (1) c) et d) s'applique,
- (ii) il rejette tout ou partie de la demande en application de l'alinéa 303 (1) c) ou d), ou des deux, sans toutefois énoncer lequel de ces alinéas s'applique,
- (iii) il refuse de confirmer ou de nier l'existence de tout dossier, sous réserve des alinéas 303 (1) c) et d).

## Exception

(2) Le fournisseur de services ne doit pas agir en application du sous-alinéa (1) d) (i) s'il est raisonnable de s'attendre à ce que ceci ait pour effet, dans les circonstances connues de la personne qui prend la décision pour le compte du fournisseur de services, de révéler au particulier, directement ou indirectement, des renseignements auxquels il n'a aucun droit d'accès.

## Délai de réponse

(3) Dès que possible, mais au plus tard 30 jours après avoir reçu la demande du particulier, le fournisseur de services lui donne, par avis écrit, la réponse exigée par le paragraphe (1) ou proroge le délai de réponse d'au plus 90 jours si, selon le cas :

- a) le fait de répondre à la demande dans les 30 jours aurait pour effet d'entraver abusivement ses activités en raison du grand nombre de renseignements demandés ou parce qu'une longue recherche s'imposerait pour les retrouver;
- b) il ne serait pas raisonnablement possible de terminer à temps l'évaluation visée au paragraphe 303 (1) qui est nécessaire pour répondre à la demande dans le délai de 30 jours.

## Prorogation du délai : avis et réponse

(4) Le fournisseur de services qui proroge le délai en application du paragraphe (3) fait ce qui suit :

- a) il remet au particulier un avis écrit motivé de la prorogation dans lequel il énonce la durée du nouveau délai;
- b) il répond à la demande du particulier, comme l'exige le paragraphe (1), dès que possible et au plus tard à la fin du nouveau délai.

## Accès accéléré

(5) Malgré les paragraphes (3) et (4), si le particulier présente au fournisseur de services une preuve suffisante pour le convaincre qu'il a besoin d'accéder au dossier demandé de renseignements personnels dans un délai précis, le fournisseur de services répond dans ce délai s'il peut raisonnablement le faire.

## Demande frivole ou vexatoire

(6) Le fournisseur de services qui a des motifs raisonnables de croire qu'une demande d'accès à un dossier de renseignements personnels est frivole ou vexatoire ou est présentée de mauvaise foi peut refuser au particulier l'accès au dossier demandé, auquel cas il remet au particulier un avis motivé à cet effet dans lequel il précise que le particulier a le droit de porter plainte à ce sujet devant le commissaire en vertu de l'article 307.

## Demande répétée rejetée

(7) Le fournisseur de services qui ne répond pas à une demande d'accès dans le délai imparti est réputé l'avoir rejetée.

## Droit de porter plainte

(8) Si le fournisseur de services rejette ou est réputé avoir rejeté tout ou partie de la demande :

- a) d'une part, le particulier a le droit de porter plainte à ce sujet devant le commissaire en vertu de l'article 307;
- b) d'autre part, dans la plainte, le fardeau de la preuve en ce qui concerne le rejet incombe au fournisseur de services.

## Identité du particulier

(9) Le fournisseur de services ne doit pas mettre tout ou partie d'un dossier de renseignements personnels à la disposition d'un particulier, ni lui en fournir une copie en application de l'alinéa (1) a), sans avoir pris au préalable des mesures raisonnables pour s'assurer de son identité.

## Aucuns droits exigibles pour l'accès

(10) Le fournisseur de services ne doit pas exiger de droits pour permettre l'accès d'un particulier à un dossier en application du présent article, sauf dans les circonstances prescrites.

(c) les renseignements contenus dans le dossier ont été recueillis ou produits essentiellement en prévision d'une instance ou aux fins de leur utilisation dans une instance et celle-ci ainsi que les appels ou les procédures qui en résultent ne sont pas terminés;

(d) il serait raisonnable de s'attendre à ce que le fait de donner un tel accès au particulier :

- (i) soit cause un risque de préjudice grave au particulier ou à un autre particulier,
- (ii) soit permette l'identification d'un particulier dont la loi exigeait qu'il fournisse au fournisseur de services les renseignements contenus dans le dossier,
- (iii) soit permette l'identification d'un particulier qui a, explicitement ou implicitement et de façon confidentielle, fourni au fournisseur de services des renseignements contenus dans le dossier, si le fournisseur estime approprié dans les circonstances que l'identité de ce particulier demeure confidentielle.

### **Droit d'accès à la partie du dossier ne faisant l'objet d'aucune restriction**

(2) Malgré le paragraphe (1), un particulier a le droit d'avoir accès à la partie d'un dossier de renseignements personnels le concernant qui peut raisonnablement être séparée de la partie du dossier à laquelle il n'a pas le droit d'avoir accès par l'effet des alinéas (1) a) à d).

### **Droit d'accès à la partie du dossier qui ne porte pas sur la prestation d'un service**

(3) Malgré le paragraphe (1), si un dossier ne porte pas principalement sur la prestation d'un service au particulier qui demande l'accès au dossier, le particulier a le droit d'avoir accès qu'aux renseignements personnels figurant dans le dossier qui le concernent et qui peuvent raisonnablement être séparés du dossier.

### **Consultation concernant les préjudices**

(4) Avant de décider de refuser de donner l'accès à un dossier de renseignements personnels à un particulier en vertu du sous-alinéa (1) d) (i), le fournisseur de services peut consulter un membre de l'Ordre des médecins et chirurgiens de l'Ontario, de l'Ordre des psychologues de l'Ontario ou de l'Ordre des travailleurs sociaux et des techniciens en travail social de l'Ontario.

### **Accès informel**

(5) La présente partie n'a pas pour effet d'empêcher le fournisseur de services de donner accès à un dossier de renseignements personnels à un particulier qui y a droit, si le particulier présente une demande d'accès verbale ou qu'il ne présente pas de demande d'accès en vertu de l'article 304.

### **Communication entre le fournisseur de services et le particulier**

(6) La présente partie n'a pas pour effet d'empêcher le fournisseur de services de communiquer avec un particulier ou son mandataire spécial au sujet d'un dossier de renseignements personnels auquel le particulier a un droit d'accès.

### **Demande d'accès**

304 (1) Un particulier peut exercer un droit d'accès à un dossier de renseignements personnels en présentant une demande d'accès écrite au fournisseur de services qui a la garde ou le contrôle des renseignements.

### **Demande détaillée**

(2) La demande doit être suffisamment détaillée pour permettre au fournisseur de services de reconnaître et de retrouver le dossier moyennant des efforts raisonnables.

### **Aide du fournisseur de services**

(3) Si la demande n'est pas suffisamment détaillée pour lui permettre de reconnaître et de retrouver le dossier moyennant des efforts raisonnables, le fournisseur de services doit proposer à l'auteur de la demande d'accès de reformuler sa demande pour la rendre conforme au paragraphe (2).

### **Réponse du fournisseur de services**

305 (1) Le fournisseur de services qui reçoit d'un particulier une demande d'accès à un dossier de renseignements personnels prend l'une ou l'autre des mesures suivantes :

a) il met le dossier à la disposition du particulier pour consultation et, à la demande du particulier, lui en fournit une copie et, si cela est raisonnablement possible, une explication de son objet et de sa nature et des termes, codes ou abréviations qui y figurent;

b) il donne au particulier un avis écrit selon lequel il a conclu, après avoir effectué une recherche raisonnable, que le dossier n'existe pas, est introuvable ou ne relève pas de la présente partie;

c) s'il rejette tout ou partie de la demande en vertu d'une disposition de la présente partie, à l'exception de l'alinéa 303 (1) c) ou d), il donne un avis écrit motivé à cet effet au particulier dans lequel il précise que le particulier a le droit de porter plainte à ce sujet devant le commissaire en vertu de l'article 307;

- a) prend des mesures raisonnables pour veiller à ce que les dossiers de renseignements personnels qui ont été recueillis pour les besoins de la prestation d'un service et dont il a la garde ou le contrôle soient conservés, transférés et éliminés de manière sécuritaire;
- a) prend des mesures raisonnables pour veiller à ce que les dossiers de renseignements personnels recueillis pour les besoins de la prestation d'un service dont il a la garde ou le contrôle soient conservés, transférés et éliminés de manière sécuritaire;

- b) se conforme aux exigences prescrites à l'égard de la conservation, du transfert et de l'élimination des dossiers.

### Conservation de dossiers faisant l'objet d'une demande d'accès

- (2) Malgré le paragraphe (1), le fournisseur de services qui a la garde ou le contrôle de renseignements personnels faisant l'objet d'une demande d'accès en vertu de l'article 303 les conserve aussi longtemps que nécessaire pour permettre au particulier d'éprouver tout recours prévu par la présente loi qu'il peut avoir à l'égard de la demande.

### Divulgaration au successeur

- 302.1 (1) Un fournisseur de services peut divulguer à son successeur éventuel des renseignements personnels concernant un particulier afin de lui permettre d'évaluer les activités du fournisseur, à condition de conclure d'abord avec lui un accord selon lequel le successeur s'engage à protéger la sécurité et le caractère confidentiel des renseignements et à ne les conserver qu'aussi longtemps qu'ils lui seront nécessaires aux fins de l'évaluation.

### Transfert au successeur

- (2) Un fournisseur de services peut transférer à son successeur un dossier de renseignements personnels concernant un particulier à condition de prendre des mesures raisonnables pour en aviser le particulier avant de le faire ou, si ce n'est pas raisonnablement possible, dès que possible après l'avoir fait.

### Définition

- (3) La définition qui suit s'applique au présent article.

«successeur éventuel» et «successeur» S'entendent d'un successeur éventuel ou d'un successeur qui est un fournisseur de services ou qui le sera s'il devient un successeur.

### Déclaration publique écrite par le fournisseur de services

- 302.2 (1) Le fournisseur de services met à la disposition du public, d'une manière opportune dans les circonstances, une déclaration écrite dans un langage clair et facile à comprendre qui réunit les conditions suivantes :
- a) elle expose, d'une manière générale, les pratiques relatives aux renseignements qu'a adoptés le fournisseur de services;

- b) elle précise la façon de communiquer avec le fournisseur de services;

- c) elle précise la façon dont un particulier peut avoir accès à un dossier de renseignements personnels le concernant, et dont le fournisseur de services a la garde ou le contrôle, et la façon dont il peut en demander la rectification;

- d) elle précise la façon de porter plainte devant le fournisseur de services et le commissaire en vertu de la présente partie.

### Utilisation ou divulgation contraire aux pratiques relatives aux renseignements du fournisseur de services

- (2) Le fournisseur de services qui utilise ou divulgue des renseignements personnels sans le consentement du particulier qu'ils concernent d'une manière qui ne correspond pas à l'exposé de ses pratiques relatives aux renseignements visé à l'alinéa (1) a) prend les mesures suivantes :

- a) il informe le particulier des utilisations et des divulgations de renseignements personnels à la première occasion raisonnable, sauf si, en application de l'article 303, le particulier n'a pas le droit d'avoir accès à un dossier des renseignements;

- b) il prend note des utilisations et des divulgations de renseignements personnels;

- c) il verse la note aux dossiers de renseignements personnels concernant le particulier, dont il a la garde ou le contrôle, ou la consigne sous une forme qui est liée à ces dossiers.

### ACCÈS DU PARTICULIER AUX RENSEIGNEMENTS PERSONNELS

### Droit d'accès du particulier

- 303 (1) Un particulier a le droit d'avoir accès au dossier de renseignements personnels le concernant dont un fournisseur de services a la garde ou le contrôle et qui se rapporte à la prestation d'un service à son égard, sauf si, selon le cas :
- a) le dossier ou les renseignements qu'il contient sont assujettis à un privilège juridique qui en limite la divulgation au particulier;
- b) une autre loi, une loi du Canada ou une ordonnance du tribunal en interdit la divulgation au particulier;



**Révocation**

(9) L'organisme prescrit pour l'application du présent article peut, à la requête de quiconque, révoquer une nomination faite en vertu du présent article si, selon le cas :

- a) le particulier auquel se rapportent les renseignements personnels ou le représentant demandant la révocation;
- b) le représentant n'est plus capable;
- c) la nomination n'est plus dans l'intérêt véritable du particulier auquel se rapportent les renseignements personnels;

d) le particulier auquel se rapportent les renseignements personnels a un tuteur à la personne, un tuteur aux biens, un procureur au soin de la personne ou un procureur aux biens qui a le pouvoir de donner ou de refuser son consentement aux types de collectes, d'utilisations et de divulgations de renseignements pour lesquels il a été nommé, dans les circonstances auxquelles s'applique la nomination.

**Procédure**

(10) Lorsqu'il effectue l'examen, l'organisme prescrit pour l'application du présent article se conforme aux exigences et restrictions prescrites.

**INTÉGRITÉ ET PROTECTION DE RENSEIGNEMENTS PERSONNELS**

**Mesures pour veiller à l'exactitude des renseignements personnels**

**Renseignements personnels utilisés par le fournisseur de services**

299 (1) Le fournisseur de services qui utilise des renseignements personnels pour les besoins de la prestation d'un service prend des mesures raisonnables pour veiller à ce que ces renseignements soient aussi exacts, complets et à jour que nécessaire, compte tenu des fins auxquelles il les utilise.

**Renseignements personnels divulgués par le fournisseur de services**

(2) Le fournisseur de services qui divulgue des renseignements personnels pour les besoins de la prestation d'un service :

- a) soit prend des mesures raisonnables pour veiller à ce que les renseignements soient aussi exacts, complets et à jour que nécessaire, compte tenu des fins de la divulgation qui lui sont connues au moment où la divulgation est faite;
- b) soit énonce clairement au destinataire de la divulgation les limites, s'il y en a, concernant l'exactitude, l'intégralité ou la mise à jour des renseignements.

**Dossier de renseignements personnels divulgués**

(3) Le fournisseur de services qui divulgue des renseignements personnels qui ont été recueillis pour les besoins de la prestation d'un service consigne de la manière prescrite toutes les divulgations faites en vertu des dispositions prescrites.

**Mesures pour veiller à ce que la collecte de renseignements personnels soit autorisée**

300 Le fournisseur de services prend des mesures raisonnables pour veiller à ce que les renseignements personnels ne soient pas recueillis sans autorisation.

**Mesures pour veiller à la sécurité des renseignements personnels**

301 (1) Le fournisseur de services prend des mesures raisonnables pour veiller à ce que, d'une part, les renseignements personnels qui ont été recueillis pour les besoins de la prestation d'un service et dont il a la garde ou le contrôle soient protégés contre le vol, la perte et toute utilisation ou divulgation non autorisée et, d'autre part, les dossiers qui les contiennent soient protégés contre toute duplication, modification ou élimination non autorisée.

**Avis de vol ou de perte communiqué à un particulier**

(2) Sous réserve des exceptions et des exigences supplémentaires prescrites, si des renseignements personnels qui ont été recueillis pour les besoins de la prestation d'un service et dont un fournisseur de services a la garde ou le contrôle sont soit volés ou perdus, soit utilisés ou divulgués sans autorisation, le fournisseur de services prend les mesures suivantes :

- a) il en avise le particulier auquel se rapportent les renseignements à la première occasion raisonnable;
- b) il précise dans l'avis que le particulier a le droit de porter plainte devant le commissaire en vertu de l'article 307.

**Avis au commissaire et au ministre**

(3) Si les circonstances entourant le vol ou la perte des renseignements personnels ou leur utilisation ou leur divulgation sans autorisation satisfont aux exigences prescrites, le fournisseur de services avise le commissaire et le ministre du vol ou de la perte de ces renseignements ou de leur utilisation ou de leur divulgation sans autorisation.

**Traitement des dossiers**

302 (1) Le fournisseur de services :

## Motifs d'une autorisation

(8) L'organisme prescrit peut autoriser la présentation d'une nouvelle requête s'il est convaincu qu'il est survenu un changement important dans les circonstances qui justifient le réexamen de la capacité du particulier.

## Nomination d'un représentant

298.1 (1) Un particulier d'au moins 16 ans dont l'incapacité est constatée peut, par voie de requête, demander à un organisme prescrit pour l'application du présent article de nommer un représentant pour consentir en son nom à la collecte, à l'utilisation ou à la divulgation de renseignements personnels par un fournisseur de services.

## Requête présentée par le représentant proposé

(2) Si un particulier est incapable, un autre particulier d'au moins 16 ans peut, par voie de requête, demander à un organisme prescrit pour l'application du présent article de le nommer représentant pour consentir, au nom du particulier incapable, à la collecte, à l'utilisation ou à la divulgation de renseignements personnels.

## Présomption : requête concernant la capacité

(3) La requête présentée en vertu du paragraphe (1) ou (2) à un organisme prescrit est réputée comprendre une requête présentée à un organisme prescrit en vertu du paragraphe 298 (3) à l'égard de la capacité du particulier, à moins que la capacité du particulier n'ait été constatée par un organisme prescrit en vertu de l'article 298 dans les six mois précédents.

## Exception

(4) Les paragraphes (1) et (2) ne s'appliquent pas si le particulier auquel se rapportent les renseignements personnels a un tuteur à la personne, un tuteur aux biens, un procureur au soin de la personne ou un procureur aux biens qui a le pouvoir de donner ou de refuser son consentement à la collecte, à l'utilisation ou à la divulgation des renseignements.

## Parties

(5) Sont parties à la requête les personnes suivantes :

1. Le particulier auquel se rapportent les renseignements personnels.
2. Le représentant proposé désigné dans la requête.
3. Chaque personne visée à la disposition 4, 5, 6 ou 7 du paragraphe 26 (1) de la Loi de 2004 sur la protection des renseignements personnels sur la santé.

4. Toute autre personne que précise l'organisme prescrit.

## Nomination

(6) Lorsqu'il nomme un représentant en vertu du présent article, l'organisme prescrit peut l'autoriser à consentir, au nom du particulier auquel se rapportent les renseignements personnels :

- a) soit à une collecte, à une utilisation ou à une divulgation de renseignements particulière à un moment particulier;
- b) soit à une collecte, à une utilisation ou à une divulgation de renseignements d'un genre et dans les circonstances que précise l'organisme prescrit, si l'incapacité du particulier est constatée au moment où le consentement est demandé;
- c) soit à toute collecte, à toute utilisation ou à toute divulgation de renseignements à n'importe quel moment, si l'incapacité du particulier est constatée au moment où le consentement est demandé.

## Critères de nomination

(7) L'organisme prescrit peut faire une nomination en vertu du présent article s'il est convaincu qu'il est satisfait aux exigences suivantes :

1. Le particulier auquel se rapportent les renseignements personnels ne s'oppose pas à la nomination.
2. Le représentant consent à la nomination, est âgé d'au moins 16 ans et est capable.
3. La nomination est dans l'intérêt véritable du particulier auquel se rapportent les renseignements personnels.

## Pouvoirs de l'organisme prescrit

(8) Sauf si le particulier auquel se rapportent les renseignements personnels s'y oppose, l'organisme prescrit peut, selon le cas :

- a) nommer représentant un particulier différent de celui qui est désigné dans la requête;
- b) limiter la durée de la nomination;
- c) subordonner la nomination à toute autre condition;

d) à la requête de quiconque, supprimer, modifier ou suspendre une condition à laquelle est subordonnée la nomination ou subordonner celle-ci à une condition supplémentaire.

**Délai prévu pour se conformer**

(77) L'organisme prescrit précise le délai dans lequel le mandataire spécial doit se conformer à ses directives.

**Mandataire spécial réputé non autorisé**

(8) Si le mandataire spécial ne se conforme pas aux directives de l'organisme prescrit dans le délai que celui-ci a précisé, il est réputé ne pas satisfaire aux exigences du paragraphe 296 (4).

**Tuteur et curateur public**

(9) Si le mandataire spécial qui reçoit des directives est le tuteur et curateur public, il est tenu de se conformer à ces directives, et le paragraphe (7) ne s'applique pas à lui.

**Procédure**

(10) Lorsqu'il effectue l'examen, l'organisme prescrit pour l'application du présent article se conforme aux exigences et restrictions prescrites.

**Pouvoir supplémentaire du mandataire spécial**

297 (1) Si la présente partie autorise ou oblige un particulier à présenter une demande, à donner une consigne ou à prendre une mesure et qu'un mandataire spécial est autorisé à consentir, à refuser ou à retirer un consentement au nom du particulier à la collecte, à l'utilisation ou à la divulgation de renseignements personnels concernant le particulier, le mandataire spécial peut également présenter une demande, donner une consigne ou prendre une mesure au nom du particulier.

**Mention du particulier valant mention du mandataire spécial**

(2) Si un mandataire spécial présente une demande, donne une consigne ou prend une mesure en vertu du paragraphe (1) au nom d'un particulier, la mention, dans la présente partie, du particulier à l'égard de la demande présentée, de la consigne donnée ou de la mesure prise par le mandataire spécial vaut mention du mandataire spécial et non du particulier.

**Constatation d'incapacité**

298 (1) Le fournisseur de services qui constate qu'un particulier est incapable le fait conformément aux exigences et aux restrictions prescrites, le cas échéant.

**Renseignements sur la constatation**

(2) S'il est constaté qu'un particulier est incapable, le fournisseur de services lui fournit les renseignements prescrits, s'il est raisonnable de le faire dans les circonstances.

**Renseignements sur la constatation**

(2) S'il est constaté qu'un particulier est incapable, le fournisseur de services lui fournit des renseignements sur les conséquences d'une telle constatation, y compris les renseignements prescrits, le cas échéant, s'il est raisonnable de le faire dans les circonstances.

**Révision de la constatation**

(3) Lorsque le fournisseur de services constate qu'un particulier est incapable, le particulier ou une personne prescrite peut, par voie de requête, demander qu'un organisme prescrit pour l'application du présent article révisé la constatation.

**Organisme de révision**

(4) Dans le cadre de sa révision, l'organisme prescrit pour l'application du présent article se conforme aux exigences et aux restrictions prescrites.

**Parties**

(5) Sont parties à la requête présentée en vertu du paragraphe (3) les personnes suivantes :

- a) le particulier ou l'auteur prescrit de la requête en révision de la constatation;
- b) le fournisseur de services qui a constaté l'incapacité;
- c) toutes les autres personnes que précise l'organisme prescrit.

**Pouvoirs de l'organisme de révision**

(6) L'organisme prescrit pour l'application du présent article peut confirmer la constatation d'incapacité ou établir que le particulier est capable.

**Limite quant aux requêtes répétées**

(7) Si la constatation selon laquelle un particulier est incapable est confirmée à la suite du règlement définitif d'une requête présentée en vertu du présent article, le particulier ne doit pas présenter une nouvelle requête en vertu du présent article qui porterait sur la même question ou une question semblable dans les six mois suivant le règlement définitif de la requête précédente, sauf si l'organisme prescrit pour l'application du présent article l'y autorise au préalable.



- b) soit aux séances de counseling auxquelles l'enfant a participé en application de la présente loi ou de l'ancienne loi ;
- b) soit aux séances de counseling auxquelles l'enfant a consenti de son plein gré en application de la présente loi ou de l'ancienne loi.

### **Priorité de la décision de l'enfant capable sur celle du mandataire spécial**

- (3) Si le particulier est un enfant de moins de 16 ans qui est capable et qu'il existe une personne autorisée à agir comme mandataire spécial de l'enfant en application du paragraphe (2), la décision que prend l'enfant de donner, de refuser ou de retirer son consentement l'emporte sur toute décision incompatible du mandataire spécial.

### **Personne autorisée en vertu de la Loi de 2004 sur la protection des renseignements personnels sur la santé**

- (4) Si un particulier n'est pas capable, une personne qui serait autorisée à consentir, au nom du particulier, à la collecte, à l'utilisation ou à la divulgation de renseignements personnels sur la santé en vertu de la Loi de 2004 sur la protection des renseignements personnels sur la santé peut être le mandataire spécial du particulier.

### **Facteurs à considérer pour donner son consentement**

- 296.1 (1) La personne qui, en vertu de la présente partie, consent au nom ou à la place d'un particulier à la collecte, à l'utilisation ou à la divulgation de renseignements personnels par un fournisseur de services, qui refuse ou retire un tel consentement, ou qui donne une consigne expresse en vertu de l'alinéa 287 (1) a) prend en considération les facteurs suivants :

- a) les désirs, les valeurs et les croyances ;
- (1) qu'elle sait que le particulier a, si celui-ci est capable, et qu'elle croit qu'il voudrait voir respectés dans les décisions prises à l'égard des renseignements personnels le concernant,

- (ii) qu'elle sait que le particulier avait lorsqu'il était capable ou en vie, si celui-ci est incapable ou décédé, et qu'elle croit qu'il aurait voulu voir respectés dans les décisions prises à l'égard des renseignements personnels le concernant,

- b) la question de savoir si les avantages prévus de la collecte, de l'utilisation ou de la divulgation des renseignements pour la personne l'emportent sur le risque de conséquences défavorables qui en résulteraient,

- c) la question de savoir si les fins auxquelles la collecte, l'utilisation ou la divulgation des renseignements est demandée peuvent être atteintes sans la collecte, l'utilisation ou la divulgation de ceux-ci,

- d) la question de savoir si la collecte, l'utilisation ou la divulgation des renseignements est nécessaire à l'exécution de toute obligation légale.

### **Établissement de la conformité**

- (2) Si le mandataire spécial d'un particulier incapable donne, refuse ou retire au nom de celui-ci son consentement à la collecte, à l'utilisation ou à la divulgation de renseignements personnels concernant le particulier par un fournisseur de services ou qu'il donne une consigne expresse en vertu de l'alinéa 287 (1) a), et que le fournisseur de services est d'avis que le mandataire spécial ne s'est pas conformé au paragraphe (1), le fournisseur peut, par voie de requête, demander à un organisme prescrit pour l'application du présent article d'établir si le mandataire spécial s'y est conformé.

### **Présomption : requête concernant la capacité**

- (3) La requête présentée à l'organisme prescrit en application du paragraphe (2) est réputée comprendre une requête présentée à un organisme prescrit en vertu du paragraphe 298 (3) à l'égard de la capacité du particulier, à moins que la capacité du particulier n'ait été constatée par un organisme prescrit en vertu de l'article 298 dans les six mois précédents.

### **Parties**

- (4) Sont parties à la requête les personnes suivantes :

1. Le fournisseur de services.

2. Le particulier incapable.

3. Le mandataire spécial.

4. Toute autre personne que précise l'organisme prescrit.

### **Pouvoir de l'organisme prescrit**

- (5) Lorsqu'il établit si le mandataire spécial s'est conformé au paragraphe (1), l'organisme prescrit peut substituer son opinion à celle du mandataire spécial.

### **Directives**

- (6) Si l'organisme prescrit établit que le mandataire spécial ne s'est pas conformé au paragraphe (1), il peut lui donner des directives et, ce faisant, il prend en considération les facteurs énoncés aux alinéas (1) a) à d).

**Consentement éclairé**

(4) Le consentement à la collecte, à l'utilisation ou à la divulgation de renseignements personnels est éclairé s'il est raisonnable dans les circonstances de croire que le particulier qu'ils concernent :

- a) d'une part, connaît les fins visées par la collecte, l'utilisation ou la divulgation;
- b) d'autre part, sait qu'il peut donner, refuser ou retirer son consentement.

**Avis concernant les fins visées**

(5) Sauf si cela n'est pas raisonnable dans les circonstances, un particulier est réputé connaître les fins visées par la collecte, l'utilisation ou la divulgation de renseignements personnels le concernant si le fournisseur de services, selon le cas :

- a) affiche un avis énonçant ces fins à un endroit où le particulier est susceptible d'en prendre connaissance;
- b) rend l'avis facilement accessible pour le particulier;
- c) remet au particulier une copie de l'avis;
- d) communique de toute autre façon le contenu de l'avis au particulier.

**Disposition transitoire**

(6) Le consentement que donne un particulier, avant le jour de l'entrée en vigueur du paragraphe (1), à la collecte, à l'utilisation ou à la divulgation de renseignements personnels est valide s'il satisfait aux exigences du présent article en la matière.

**Retrait du consentement**

292 Le particulier qui a donné son consentement peut le retirer en remettant un avis au fournisseur de services. Le retrait du consentement n'a cependant aucun effet rétroactif.

**Consentement conditionnel**

293 Si un particulier assortit son consentement à la collecte, à l'utilisation ou à la divulgation de renseignements personnels d'une condition, cette condition n'est pas applicable dans la mesure où elle prétend interdire ou limiter toute consignation de renseignements personnels, par un fournisseur de services, qu'exigent la loi ou des normes établies de pratique professionnelle ou institutionnelle.

**Présomption de validité du consentement**

294 Le fournisseur de services qui a obtenu le consentement à la collecte, à l'utilisation ou à la divulgation de renseignements personnels du particulier qu'ils concernent ou qui a reçu copie d'un document se présentant comme une attestation du consentement en question peut présumer que le consentement remplit les exigences de la présente loi et que le particulier ne l'a pas retiré, sauf s'il n'est pas raisonnable de le faire.

**CAPACITÉ ET MANDATAIRE SPÉCIAL****Présomption de capacité**

295 Un particulier est présumé capable et un fournisseur de services peut invoquer cette présomption, sauf s'il a des motifs raisonnables de croire que le particulier n'est pas capable.

**Capacité variable****Différents renseignements**

295.1 (1) Un particulier peut être capable à l'égard de certaines parties de renseignements personnels, mais incapable à l'égard d'autres parties.

**Différents moments**

(2) Un particulier peut être capable à un moment donné, mais incapable à un autre moment.

**Mandataire spécial**

296 (1) Le particulier qui est capable peut donner, refuser ou retirer son consentement. Il peut, s'il a 16 ans ou plus, autoriser par écrit un autre particulier de 16 ans ou plus qui est capable à être son mandataire spécial.

**Enfant de moins de 16 ans**

(2) Si le particulier est un enfant de moins de 16 ans, son parent, une société ou une autre personne autorisée à donner, à refuser ou à retirer le consentement à la place du parent peut être le mandataire spécial de l'enfant, sauf si les renseignements se rapportent :

- a) soit à un traitement au sujet duquel l'enfant a pris une décision conformément à la Loi de 1996 sur le consentement aux soins de santé;

question en litige, ou qui peut l'être, dans un tribunal ou un autre organisme, à moins qu'un médecin ne déclare par écrit qu'il croit que cela :

a) ou bien sera vraisemblablement préjudiciable au traitement ou à la guérison du particulier que le dossier concerne;

b) ou bien aura vraisemblablement pour conséquence,

(i) soit de porter atteinte à l'état mental d'un autre particulier,

(ii) soit de causer un préjudice corporel à un autre particulier.

### **Décision du tribunal ou de l'organisme quant à la divulgation**

(3) Si la divulgation, la transmission ou la consultation d'un dossier relatif à un trouble mental est exigée par un tribunal ou un organisme saisi d'une question en litige, le tribunal ou l'organisme établit si le dossier visé dans la déclaration du médecin doit être divulgué, transmis ou consulté.

### **Audience**

(4) Avant de prendre la décision visée au paragraphe (3), le tribunal ou l'organisme donne un avis au médecin. Si le tribunal ou l'organisme tient une audience afin d'établir si le dossier doit être divulgué, transmis ou consulté, l'audience se tient à huis clos.

### **Questions étudiées**

(5) Lorsqu'il prend la décision visée au paragraphe (3), le tribunal ou l'organisme étudie si la divulgation, la transmission ou la consultation du dossier relatif à un trouble mental visé dans la déclaration du médecin aura vraisemblablement une conséquence décrite à l'alinéa (2) a) ou b). À cette fin, le tribunal ou l'organisme peut consulter le dossier.

### **Ordonnance**

(6) S'il est convaincu qu'une conséquence décrite à l'alinéa (2) a) ou b) se produira vraisemblablement, le tribunal ou l'organisme ne doit pas ordonner la divulgation, la transmission ou la consultation du dossier relatif à un trouble mental visé dans la déclaration du médecin, à moins d'être convaincu qu'il est essentiel de le faire dans l'intérêt de la justice.

### **Incompatibilité**

(7) Les paragraphes (2) à (6) s'appliquent malgré toute disposition de la Loi de 2004 sur la protection des renseignements personnels sur la santé.

### **Remise du dossier au fournisseur de services**

(8) Si un dossier relatif à un trouble mental doit, à la suite d'une ordonnance, être divulgué, transmis ou consulté en application du présent article, le greffier du tribunal ou de l'organisme devant lequel le dossier est admis en preuve ou, si le dossier n'est pas admis en preuve, la personne à laquelle est transmis le dossier, le rend au fournisseur de services dès que possible après le règlement de la question en litige à l'égard de laquelle le dossier était exigé.

## **CONSENTEMENT**

### **Éléments du consentement : collecte, utilisation et divulgation de renseignements personnels**

**291 (1)** Si la présente loi ou une autre loi exige le consentement d'un particulier à la collecte, à l'utilisation ou à la divulgation de renseignements personnels par un fournisseur de services, le consentement doit satisfaire aux exigences suivantes :

a) être le consentement du particulier;

b) être éclairé;

c) se rapporter aux renseignements en question;

d) ne pas être obtenu ni par supercherie ni par coercition.

### **Consentement implicite : collecte et utilisation de renseignements**

(2) Le consentement à la collecte et à l'utilisation de renseignements personnels peut être implicite si la collecte est effectuée directement auprès du particulier auquel les renseignements se rapportent et qui sont recueillis pour les besoins de la prestation d'un service.

### **Consentement écrit ou oral**

(3) Le consentement peut être écrit ou oral. Toutefois, un consentement oral ne peut être invoqué que si le fournisseur de services qui l'obtient consigne les renseignements suivants :

1. Le nom du particulier qui a donné le consentement.

2. Les renseignements auxquels le consentement se rapporte.

3. La manière dont l'avis concernant les fins visées, qu'exige le paragraphe (5), a été fourni au particulier.



**Exigences relatives aux entités prescrites**

(5) Le fournisseur de services peut divulguer des renseignements personnels à une entité prescrite en vertu du paragraphe (1) si :

a) d'une part, l'entité prescrite a adopté des règles de pratique et de procédure pour protéger la vie privée des particuliers visés par ces renseignements et maintenir le caractère confidentiel de ces renseignements;

b) d'autre part, le commissaire a approuvé ces règles de pratique et de procédure;

**Exigences relatives aux entités prescrites**

(5) Le fournisseur de services peut divulguer des renseignements personnels à une entité prescrite en vertu du paragraphe (1) ou (3) si les conditions suivantes sont réunies :

a) l'entité prescrite a adopté des règles de pratique et de procédure pour protéger la vie privée des particuliers visés par ces renseignements et maintenir le caractère confidentiel de ces renseignements;

b) le commissaire a approuvé ces règles de pratique et de procédure.

**Exception**

(6) Malgré l'alinéa (5) b), le fournisseur de services peut divulguer des renseignements personnels à une entité prescrite en vertu du paragraphe (1) avant le premier anniversaire du jour de l'entrée en vigueur du présent article et ce, même si le commissaire n'a pas approuvé ses règles de pratique et de procédure;

**Exception**

(6) Malgré l'alinéa (5) b), le fournisseur de services peut divulguer des renseignements personnels à une entité prescrite en vertu du paragraphe (1) ou (3) avant le premier anniversaire du jour de l'entrée en vigueur du présent article et ce, même si le commissaire n'a pas approuvé ses règles de pratique et de procédure.

**Examen des règles de pratique et de procédure par le commissaire**

(7) Le commissaire examine les règles de pratique et de procédure de chaque entité prescrite tous les trois ans à compter de leur première approbation et indique au fournisseur de services si l'entité prescrite continue ou non de satisfaire aux exigences du paragraphe (5).

**Autorisation : collecte de renseignements personnels par une entité prescrite**

(8) Une entité prescrite est autorisée à recueillir les renseignements personnels que peut lui divulguer un fournisseur de services en vertu du paragraphe (1);

**Autorisation : collecte de renseignements personnels par une entité prescrite ou une autre personne ou entité**

(8) Une entité prescrite ou une personne ou entité qui n'est pas une entité prescrite est autorisée à recueillir les renseignements personnels que peut lui divulguer un fournisseur de services en vertu du paragraphe (1), (2) ou (3).

**Utilisation et divulgation de renseignements personnels par une entité prescrite ou par une autre personne ou entité**

(9) Sous réserve des exceptions et des exigences supplémentaires prescrites, le cas échéant, l'entité prescrite ou une personne ou entité qui n'est pas une entité prescrite qui reçoit des renseignements personnels en vertu du paragraphe (1), (2) ou (3) ne doit pas les utiliser, sauf aux fins pour lesquelles elle les a reçus, ni les divulguer, sauf si la loi l'exige.

**Divulguation réputée conforme**

(10) Pour l'application de l'alinéa 42 (1) e) de la Loi sur l'accès à l'information et la protection de la vie privée, de l'alinéa 32 e) de la Loi sur l'accès à l'information municipale et la protection de la vie privée ou de l'alinéa 43 (1) h) de la Loi de 2004 sur la protection des renseignements personnels sur la santé, la divulgation de renseignements personnels par une institution ou un dépositaire de renseignements sur la santé, au sens de ces lois, en vertu du présent article est réputée effectuée à des fins de conformité à la présente loi.

**Dossiers relatifs aux troubles mentaux****Définitions**

290 (1) Les définitions qui suivent s'appliquent au présent article.

«dossier relatif à un trouble mental» S'entend d'un dossier ou d'une partie d'un dossier constitué au sujet d'un particulier relativement à un trouble important des processus émotifs, de la pensée ou de la cognition qui affaiblit grandement la capacité du particulier de formuler des jugements raisonnés. («record of a mental disorder»)

«tribunal» S'entend notamment de la Cour divisionnaire. («court»)

**Divulguation conformément à une assignation**

(2) Le fournisseur de services divulgue ou transmet un dossier relatif à un trouble mental, ou en permet la consultation, conformément à une assignation, une ordonnance, une directive, un ordre, un avis ou une exigence similaire à l'égard d'une

- (i) à une assignation délivrée, à une ordonnance rendue ou à une exigence semblable imposée dans le cadre d'une instance par une personne qui a compétence pour ordonner la production de renseignements;
- (ii) à une règle de procédure relative à la production de renseignements dans une instance;

- (g) si le fournisseur de services a des motifs raisonnables de croire que cela est nécessaire pour évaluer, réduire ou éliminer un risque de préjudice grave à une personne ou un groupe de personnes;
- (h) sous réserve des exigences et des restrictions prescrites, le cas échéant, si la loi ou un traité, un accord ou un arrangement conclu en vertu d'une loi ou d'une loi du Canada autorise ou exige la divulgation de ces renseignements.

#### **Évaluation du besoin de protection d'un enfant**

- (2) Une société peut divulguer à une autre société ou à un service de bien-être de l'enfance intervenant hors de l'Ontario des renseignements personnels qui ont été recueillis pour les besoins de la prestation d'un service si ces renseignements sont :

- a) sont raisonnablement nécessaires pour évaluer, réduire ou éliminer un risque de préjudice;
- b) sont nécessaires à une fin prescrite relative aux fonctions d'une société visées au paragraphe 34 (1).

#### **Évaluation, réduction ou élimination d'un risque de préjudice à un enfant**

- (2) Une société peut divulguer à une autre société ou à un service de bien-être de l'enfance intervenant hors de l'Ontario des renseignements personnels qui ont été recueillis pour les besoins de la prestation d'un service si ces renseignements sont :

raisonnablement nécessaires pour évaluer, réduire ou éliminer un risque de préjudice à un enfant.

#### **Fin prescrite liée aux fonctions d'une société**

- (2.1) Une société peut divulguer des renseignements personnels qui ont été recueillis pour les besoins de la prestation d'un service si ces renseignements sont raisonnablement nécessaires à une fin prescrite liée à l'exercice des fonctions que lui attribue le paragraphe 34 (1).

#### **Définition**

- (3) La définition qui suit s'applique au présent article.

«exécution de la loi» S'entend au sens du paragraphe 2 (1) de la Loi sur l'accès à l'information et la protection de la vie privée.

#### **Divulgaration : planification et gestion de services**

##### **Divulgaration à une entité prescrite**

289 (1) Le fournisseur de services peut divulguer des renseignements personnels qu'il a recueillis sous le régime de la présente loi à une entité prescrite à des fins d'analyse ou de compilation de renseignements statistiques à l'égard de la gestion, de l'évaluation, de la surveillance ou de la planification de services ou de l'affectation de ressources à ces services, y compris leur prestation, si l'entité prescrite satisfait aux exigences du paragraphe (5).

##### **Divulgaration à une autre personne ou entité**

(2) Le fournisseur de services peut, sous réserve des exigences et des restrictions prescrites, divulguer des renseignements personnels qu'il a recueillis sous le régime de la présente loi à une personne ou entité qui n'est pas une entité prescrite aux fins mentionnées au paragraphe (1). La personne ou entité à laquelle le fournisseur divulgue de tels renseignements en vertu du présent paragraphe doit satisfaire aux exigences et aux restrictions prescrites relativement à l'utilisation, à la protection, à la divulgation, à la restitution ou à l'élimination des renseignements.

##### **Divulgaration exigée par le ministre**

(3) Le ministre peut exiger qu'un fournisseur de services divulgue des renseignements, y compris des renseignements personnels, à une entité prescrite ou à une personne ou entité, y compris l'entité prescrite, à laquelle le fournisseur divulgue ces renseignements en vertu du présent paragraphe doit satisfaire aux exigences et restrictions prescrites relativement à l'utilisation, à la protection, à la divulgation, à la restitution ou à l'élimination des renseignements.

##### **Divulgaration exigée par le ministre**

(3) Le ministre peut exiger qu'un fournisseur de services divulgue des renseignements, y compris des renseignements personnels, à une entité prescrite, si elle satisfait aux exigences du paragraphe (5), ou à une personne ou entité qui n'est pas une entité prescrite aux fins mentionnées au paragraphe (1). La personne ou entité, y compris l'entité prescrite, à laquelle le fournisseur divulgue ces renseignements en vertu du présent paragraphe doit satisfaire aux exigences et restrictions prescrites relativement à l'utilisation, à la protection, à la restitution ou à l'élimination des renseignements.

#### **Exception**

- (4) Les paragraphes (1), (2) et (3) ne s'appliquent pas aux renseignements prescrits dans les circonstances prescrites.



- b) si le fournisseur de services a des motifs raisonnables de croire que cela est raisonnablement nécessaire pour évaluer, réduire ou éliminer un risque de préjudice grave à une personne ou un groupe de personnes;
- c) une fin à laquelle la présente loi, une autre loi ou une loi du Canada autorise ou oblige une personne à les divulguer au fournisseur de services;
- d) la planification, la gestion ou la prestation des services que le fournisseur de services fournit ou finance, intégralement ou partiellement, l'affectation de ressources à leur égard, leur évaluation ou leur surveillance, ou la détection, la surveillance ou la répression des fraudes liées à ces services ou des cas où des services ou des avantages connexes ont été reçus sans autorisation;
- e) des activités de gestion des risques et des erreurs;
- f) des activités visant à améliorer ou à maintenir la qualité d'un service;
- g) l'élimination ou la modification des renseignements afin de dissimuler l'identité du particulier;
- h) la sollicitation du consentement du particulier, ou de son mandataire spécial, lorsque les renseignements personnels qu'il utilise le fournisseur de services à cette fin se limitent au nom et aux coordonnées du particulier et de son mandataire spécial, s'il y en a un;
- i) une instance poursuivie ou éventuelle à laquelle le fournisseur de services ou son employé, son mandataire, son ancien employé ou son ancien mandataire, son dirigeant, son employé, son mandataire, son ancien dirigeant, son ancien employé ou son ancien mandataire est partie ou témoin, ou à laquelle il s'attend à l'être, si les renseignements concernent ou constituent une question en litige dans l'instance;
- j) l'exercice d'activités de recherche par le fournisseur de services, sous réserve des exigences et des restrictions prescrites, le cas échéant;
- k) sous réserve des exigences et des restrictions prescrites, le cas échéant, si la loi ou un traité, un accord ou un arrangement conclu en vertu d'une loi ou d'une loi du Canada l'autorise ou l'exige.

#### Exception

(2) Malgré l'alinéa (1) a), si le particulier que concernent les renseignements personnels donne une consigne expresse à l'effet contraire, la société peut tout de même utiliser ces renseignements personnels à une fin liée à l'exercice des fonctions que lui attribue le paragraphe 31 (1) si cela est dans l'intérêt véritable d'un enfant.

#### Exception

(2) Malgré l'alinéa (1) a), si le particulier que concernent les renseignements personnels donne une consigne expresse à l'effet contraire :

- a) la société peut tout de même utiliser ces renseignements personnels, selon le cas :
- (i) s'ils sont raisonnablement nécessaires pour évaluer, réduire ou éliminer un risque de préjudice à un enfant,
- (ii) à une fin prescrite liée à l'exercice des fonctions que lui attribue le paragraphe 34 (1);
- b) le fournisseur de services peut tout de même utiliser ces renseignements personnels s'ils sont raisonnablement nécessaires pour évaluer, réduire ou éliminer un risque de préjudice grave à une personne ou un groupe de personnes.

#### Divulguation sans consentement

288 (1) Le fournisseur de services peut, sans le consentement d'un particulier, divulguer des renseignements personnels concernant ce particulier qui ont été recueillis pour les besoins de la prestation d'un service :

a) à un organisme chargé de l'exécution de la loi au Canada soit pour faciliter une enquête effectuée en vue d'une instance, soit pour permettre à l'organisme d'établir s'il y a lieu d'effectuer une telle enquête;

b) à un futur tuteur à l'instance ou à un futur représentant judiciaire du particulier aux fins de sa nomination à ce titre;

c) à un tuteur à l'instance ou à un représentant judiciaire qui est autorisé en vertu des Règles de procédure civile, ou par une ordonnance du tribunal, à introduire ou à poursuivre une instance au nom du particulier, ou à y présenter une défense, ou à représenter le particulier dans une instance;

d) pour contacter un membre de la famille élargie, un ami ou le mandataire spécial éventuel du particulier, si ce dernier est blessé, frappé d'incapacité ou n'est pas capable par ailleurs de donner lui-même son consentement;

e) pour contacter un membre de la famille élargie ou un ami du particulier, si le particulier est

(f) en vue de se conformer, selon le cas :

(f) sous réserve de l'article 290, en vue de se conformer, selon le cas :



**Sans consentement**

(2) Le fournisseur de services peut recueillir indirectement des renseignements personnels pour les besoins de la prestation d'un service sans le consentement du particulier auquel les renseignements se rapportent si, selon le cas :

a) les renseignements visés par la collecte sont raisonnablement nécessaires pour les besoins de la prestation d'un service et il n'est pas raisonnablement possible de recueillir directement auprès du particulier des renseignements personnels ;

(i) raisonnablement exacts et complets ;

(ii) en temps opportun ;

b) une société doit recueillir les renseignements auprès d'une autre société ou d'un service de bien-être de l'enfance intervenant hors de l'Ontario et les renseignements, selon le cas :

(i) sont raisonnablement nécessaires pour évaluer si un enfant risque de subir un préjudice ;

(ii) sont nécessaires à une fin prescrite relative aux fonctions d'une société visées au paragraphe 34 (1) ;

a) les renseignements visés par la collecte sont raisonnablement nécessaires pour les besoins de la prestation d'un service ou pour évaluer, réduire ou éliminer un risque de préjudice grave à une personne ou un groupe de personnes et il n'est pas raisonnablement possible de recueillir directement auprès du particulier des renseignements personnels, selon le cas :

(i) raisonnablement exacts et complets ;

(ii) en temps opportun ;

b) une société doit recueillir les renseignements auprès d'une autre société ou d'un service de bien-être de l'enfance intervenant hors de l'Ontario et les renseignements sont raisonnablement nécessaires pour évaluer, réduire ou éliminer un risque de préjudice à un enfant ;

b.1) une société doit recueillir les renseignements et les renseignements sont raisonnablement nécessaires à une fin prescrite liée à l'exercice des fonctions que lui attribue le paragraphe 34 (1) ;

c) le commissaire autorise la collecte indirecte de renseignements ;

d) sous réserve des exigences et des restrictions prescrites, le cas échéant, la loi ou un traité, un accord ou un arrangement conclu en vertu d'une loi ou d'une loi du Canada autorise ou exige la collecte indirecte de renseignements.

**Collecte directe sans consentement**

285 Le fournisseur de services peut recueillir des renseignements personnels directement auprès du particulier qu'ils concernent, même si ce particulier n'est pas capable, si la collecte est raisonnablement nécessaire soit pour les besoins de la prestation d'un service et qu'il n'est pas raisonnablement possible d'obtenir un consentement en temps opportun, soit pour évaluer, réduire ou éliminer un risque de préjudice grave à une personne ou un groupe de personnes.

**Collecte directe sans consentement**

285 Le fournisseur de services peut recueillir des renseignements personnels directement auprès du particulier qu'ils concernent, même si ce particulier n'est pas capable, si, selon le cas :

a) la collecte est raisonnablement nécessaire pour les besoins de la prestation d'un service et il n'est pas raisonnablement possible d'obtenir un consentement en temps opportun ;

b) la collecte est raisonnablement nécessaire pour évaluer, réduire ou éliminer un risque de préjudice grave à une personne ou un groupe de personnes ;

c) le fournisseur de services est une société et les renseignements sont raisonnablement nécessaires pour évaluer, réduire ou éliminer un risque de préjudice à un enfant.

**Avis au particulier : utilisation ou divulgation de renseignements**

286 Lorsque le fournisseur de services recueille des renseignements personnels directement auprès d'un particulier, il lui donne un avis indiquant que les renseignements peuvent être utilisés ou divulgués conformément à la présente partie.

**Utilisation permise**

287 (1) Le fournisseur de services peut utiliser des renseignements personnels recueillis pour les besoins de la prestation d'un service à l'une ou l'autre des fins suivantes :

a) la fin visée par la collecte ou la production des renseignements et toutes les fonctions raisonnablement nécessaires à la réalisation de cette fin, y compris la fourniture de renseignements à un de ses dirigeants, employés ou mandataires ou à un expert-conseil dont il a retenu les services, sauf si les renseignements ont été recueillis avec le consentement du particulier ou en vertu de l'alinéa 284 (2) a) et que le particulier donne une consigne expresse à l'effet contraire ;

**Exceptions : application d'autres lois à une institution**

(2) Les articles 282 à 288 et 299 à 310 ne s'appliquent pas à une institution au sens de la Loi sur l'accès à l'information et la protection de la vie privée ou de la Loi sur l'accès à l'information municipale et la protection de la vie privée.

**Exceptions : application d'autres lois à un dépositaire de renseignements sur la santé**

(3) Les articles 282 à 288 et 291 à 310 ne s'appliquent pas à un dépositaire de renseignements sur la santé au sens de la Loi de 2004 sur la protection des renseignements personnels sur la santé à l'égard de la collecte, de l'utilisation ou de la divulgation de renseignements personnels sur la santé.

**Exceptions : questions d'adoption**

(4) Les articles 282 à 310 ne s'appliquent pas :

- a) à l'utilisation ou à la divulgation, en convention à l'article 224, de renseignements ayant trait à une adoption par un titulaire de permis ou une société;

b) à la collecte, à l'utilisation ou à la divulgation de renseignements donnés à un dépositaire désigné en application de l'article 221 ou à d'autres personnes en application de l'article 222.

**Exceptions : autres questions**

(5) Les articles 282 à 310 ne s'appliquent pas :

- a) aux dossiers figurant dans le registre tenu en application du paragraphe 130 (5);

~~b) aux renseignements faisant l'objet d'une interdiction de publication visée au paragraphe 85 (8), (9) ou (10) ou 131 (11);~~

- c) aux dossiers auxquels s'applique le paragraphe 127 (6) ou (8);

- d) aux rapports visés par une ordonnance rendue en vertu du paragraphe 160 (6).

**Dossiers du fournisseur de services**

(6) Sauf disposition contraire de la présente loi ou de ses règlements, la présente partie s'applique à tout dossier dont un fournisseur de services a le contrôle ou la garde, que le dossier ait été consigné avant ou après l'entrée en vigueur de la présente partie.

**Divulgation interdite par la loi fédérale**

(7) Il est entendu que la présente partie n'a pas pour effet d'autoriser ou d'exiger la divulgation de renseignements dont la divulgation est interdite en application du *Code criminel* (Canada), de la *Loi sur le système de justice pénale pour les adolescents* (Canada) ou de toute autre loi du Canada.

**Collecte, utilisation et divulgation de renseignements personnels : consentement exigé**

282 Le fournisseur de services ne doit pas recueillir des renseignements personnels concernant un particulier pour les besoins de la prestation d'un service, ni utiliser ou divulguer ces renseignements, sauf si, selon le cas :

- a) le particulier a donné au fournisseur de services le consentement prévu par la présente loi et la collecte, l'utilisation ou la divulgation des renseignements est nécessaire, au mieux de la connaissance du fournisseur de services, à une fin légitime;

b) la présente loi autorise ou exige la collecte, l'utilisation ou la divulgation de renseignements sans le consentement du particulier.

**Collecte, utilisation et divulgation de renseignements autres que des renseignements personnels**

283 (1) Le fournisseur de services ne doit pas recueillir des renseignements personnels pour les besoins de la prestation d'un service, ni utiliser ou divulguer ces renseignements si d'autres renseignements permettent de réaliser ces fins.

**Collecte, utilisation et divulgation de renseignements personnels : limitation à ce qui est raisonnablement nécessaire**

(2) Le fournisseur de services ne doit pas recueillir, utiliser ou divulguer plus de renseignements personnels qu'il n'est raisonnablement nécessaire pour les besoins de la prestation d'un service.

**Exception**

(3) Le présent article ne s'applique pas aux renseignements personnels que la loi oblige un fournisseur de services à recueillir, à utiliser ou à divulguer.

**Collecte indirecte de renseignements personnels****Avec consentement**

284 (1) Le fournisseur de services peut recueillir indirectement des renseignements personnels pour les besoins de la prestation d'un service si le particulier auquel les renseignements se rapportent y consent.

## **Divulgarion à d'autres ministres d'autres ministres de la Couronne du chef de l'Ontario**

(5) Le ministre et d'autres ministres d'autres ministres de la Couronne du chef de l'Ontario prescrits peuvent se divulguer des renseignements personnels et recueillir indirectement de tels renseignements les uns auprès des autres aux fins mentionnées aux dispositions 3 et 6 du paragraphe (1).

### **Divulgarion réputée conforme**

(6) La divulgation de renseignements personnels visée au paragraphe (5) est réputée effectuée à des fins de conformité à la présente loi.

### **Divulgarion réputée conforme**

(6) Pour l'application de l'alinéa 42 (1) e) de la Loi sur l'accès à l'information et la protection de la vie privée, de l'alinéa 32 e) de la Loi sur l'accès à l'information municipale et la protection de la vie privée ou de l'alinéa 43 (1) h) de la Loi de 2004 sur la protection des renseignements personnels sur la santé, la divulgation de renseignements personnels par une institution ou un dépositaire de renseignements sur la santé, au sens de ces lois, en vertu du paragraphe (2) ou (5) est réputée effectuée à des fins de conformité à la présente loi.

### **Renseignements personnels : recherche et analyse**

(7) La collecte, l'utilisation ou la divulgation de renseignements personnels à des fins de recherche et d'analyse visées à la disposition 6 du paragraphe (1) est assujettie aux exigences et restrictions prescrites.

### **Avis exigé par le paragraphe 39 (2) de la Loi sur l'accès à l'information et la protection de la vie privée**

(8) Si le ministre recueille indirectement des renseignements personnels en vertu du paragraphe (1), l'avis exigé par le paragraphe 39 (2) de la Loi sur l'accès à l'information et la protection de la vie privée peut être donné :

a) soit au moyen d'un avis public affiché sur un site Web du gouvernement de l'Ontario;

b) soit par un autre mode prescrit.

### **Renseignements demandés par le ministre**

### **Collecte de renseignements par les fournisseurs de services**

280 (1) Le ministre peut demander qu'un fournisseur de services recueille directement auprès des particuliers auxquels il fournit un service des renseignements, y compris des renseignements personnels, qui sont raisonnablement nécessaires à une fin prescrite qui est compatible avec une fin visée au paragraphe 279 (1). Le fournisseur donne suite à cette demande dès qu'il la reçoit.

### **Divulgarion au ministre**

(2) Un fournisseur de services divulgue les renseignements recueillis en vertu du paragraphe (1) au ministre dans le délai, sous la forme et de la manière que précise le ministre.

### **Avis exigé par le paragraphe 39 (2) de la Loi sur l'accès à l'information et la protection de la vie privée**

(3) S'il publie l'avis mentionné au paragraphe 279 (8), le ministre en informe le fournisseur de services, qui avise à son tour, sous la forme et de la manière que précise le ministre, le particulier auquel il fournit un service des renseignements énoncés dans l'avis.

### **Avis exigé par le paragraphe 39 (2) de la Loi sur l'accès à l'information et la protection de la vie privée**

(3) Si le ministre recueille indirectement des renseignements personnels en vertu du paragraphe (1), l'avis exigé par le paragraphe 39 (2) de la Loi sur l'accès à l'information et la protection de la vie privée peut être donné :

a) soit au moyen d'un avis public affiché sur un site Web du gouvernement de l'Ontario;

b) soit par un autre mode prescrit.

### **Avis : fournisseurs de services**

(4) Le ministre informe le fournisseur de services qui a recueilli les renseignements personnels en vertu du paragraphe (1) de l'avis visé au paragraphe (3). Le fournisseur de services avise alors le particulier auquel il fournit un service des renseignements énoncés dans l'avis sous la forme et de la manière que précise le ministre.

### **COLLECTE, UTILISATION ET DIVULGATION DE RENSEIGNEMENTS PERSONNELS PAR LES FOURNISSEURS DE SERVICES**

### **Champ d'application de la présente partie**

281 (1) Sous réserve des paragraphes (2), (3), (4), (5) et (7), les articles 282 à 310 s'appliquent à la collecte, à l'utilisation et à la divulgation de renseignements personnels par un fournisseur de services.



«pratiques relatives aux renseignements» Les politiques relatives à la collecte, à l'utilisation, à la modification, à la divulgation, à la conservation et à l'élimination de renseignements personnels et aux mesures de précaution et pratiques d'ordre administratif, technique et matériel que le fournisseur de services maintient à l'égard de ces renseignements. («information pratiques»)

«service» Service ou programme fourni ou financé en vertu de la présente loi ou fourni en vertu d'un permis à cet effet. («service»)

**Prépondérance des dispositions relatives à la confidentialité**

278.1 Les paragraphes 85 (8), (9) et (10) et 131 (11) l'emportent sur toute disposition incompatible de la présente partie.

POUVOIRS DU MINISTRE EN MATIÈRE DE COLLECTE, D'UTILISATION ET DE DIVULGATION DE RENSEIGNEMENTS PERSONNELS

**Collecte, utilisation et divulgation de renseignements personnels par le ministre**

**Collecte de renseignements personnels**

279 (1) Le ministre peut recueillir, directement ou indirectement, des renseignements personnels à des fins liées aux questions suivantes et les utiliser à ces fins :

1. L'application de la présente loi et des règlements.
2. La vérification de la conformité à la présente loi et aux règlements.
3. La planification, la gestion ou la prestation des services que le ministre fournit ou finance, intégralement ou partiellement, l'affectation de ressources à leur égard, leur évaluation ou leur surveillance, ou la détection, la surveillance et la répression des fraudes liées à ces services ou des cas où des services ou des avantages connexes ont été reçus sans autorisation.
4. L'exercice d'activités de gestion des risques et des erreurs à l'égard des services que le ministre fournit ou finance intégralement ou partiellement.
5. L'exercice d'activités visant à améliorer ou à maintenir la qualité des services que le ministre fournit ou finance intégralement ou partiellement.
6. L'exercice d'activités de recherche et d'analyse qui se rapportent aux enfants et à leur famille, y compris des études longitudinales menées par le ministre ou pour son compte qui se rapportent à ce qui suit :

- i. un service,
- ii. la transition des enfants et de leur famille lorsqu'ils passent d'un service à l'autre ou cessent de bénéficier de services, y compris les résultats obtenus,
- iii. les programmes qui soutiennent l'apprentissage, le développement, la santé et le bien-être des enfants et de leur famille, y compris les programmes fournis ou financés intégralement ou partiellement par le ministre ou un autre ministère du gouvernement de l'Ontario.

**Renseignements personnels exigés par le ministre**

(2) Le ministre peut exiger des personnes suivantes qu'elles lui divulguent les renseignements personnels qui sont raisonnablement nécessaires aux fins visées au paragraphe (1) :

1. Un fournisseur de services.
2. Toute autre personne prescrite qui possède des renseignements se rapportant à l'une ou l'autre des fins visées au paragraphe (1).

**Renseignements autres que des renseignements personnels**

(3) Le ministre ne doit pas recueillir ou utiliser des renseignements personnels à une fin que d'autres renseignements permettent de réaliser.

**Renseignements personnels : limitation à ce qui est raisonnablement nécessaire**

(4) Le ministre ne doit pas recueillir ou utiliser plus de renseignements personnels qu'il n'est raisonnablement nécessaire pour réaliser la fin visée.

**Renseignements autres que des renseignements personnels**

(3) Le ministre ne doit pas recueillir, utiliser ou divulguer des renseignements personnels à une fin que d'autres renseignements permettent de réaliser.

**Renseignements personnels : limitation à ce qui est raisonnablement nécessaire**

(4) Le ministre ne doit pas recueillir, utiliser ou divulguer plus de renseignements personnels qu'il n'est raisonnablement nécessaire pour réaliser la fin visée.

i) contrevient à toute autre disposition de la présente loi ou des règlements prescrite pour l'application du présent paragraphe.

#### Peine

(2) La personne déclarée coupable d'une infraction prévue au paragraphe (1) est passible :

- a) s'il s'agit d'un particulier, d'une amende d'au plus 1 000 \$ pour chaque journée au cours de laquelle l'infraction se poursuit et d'une peine d'emprisonnement maximale d'un an, ou d'une seule de ces peines;
- b) s'il ne s'agit pas d'un particulier, d'une amende d'au plus 1 000 \$ pour chaque journée au cours de laquelle l'infraction se poursuit.

#### Infraction : entrave au travail de l'inspecteur, renseignements faux

(3) Est coupable d'une infraction quiconque :

- a) gêne ou entrave le travail de l'inspecteur qui effectue une inspection sous le régime de la présente partie, ou empêche de quelque autre façon un inspecteur d'exercer les pouvoirs ou fonctions qui lui attribue la présente partie;
- b) fournit sciemment de faux renseignements dans une demande présentée sous le régime de la présente partie ou dans une déclaration, un rapport ou un état exigés sous le régime de la présente partie ou en vertu des règlements;
- c) contrevient à une autre disposition de la présente loi ou des règlements prescrite pour l'application du présent paragraphe.

#### Peine

(4) La personne déclarée coupable d'une infraction prévue au paragraphe (3) est passible d'une amende d'au plus 5 000 \$.

#### Prescription

(5) Est irrecevable l'instance relative à une infraction prévue au paragraphe (1) ou (3) plus de deux ans après le jour où les preuves de l'infraction ont été portées pour la première fois à la connaissance du directeur ou de l'inspecteur.

#### Administrateurs, dirigeants et employés

(6) Si une personne morale commet une infraction prévue au présent article, l'administrateur, le dirigeant ou l'employé de la personne morale qui a autorisé ou permis la commission de l'infraction ou y a participé en est également coupable.

### PARTIE X RENSEIGNEMENTS PERSONNELS DÉFINITIONS

#### Définitions

278 Les définitions qui suivent s'appliquent à la présente partie.

«capable» En mesure de comprendre les renseignements pertinents qui permettent de décider de consentir ou non à la collecte, à l'utilisation ou à la divulgation de renseignements personnels et de saisir les conséquences raisonnablement prévisibles de la décision de donner, de refuser ou de retirer son consentement. Le terme «capacité» a un sens correspondant. («capable», «capacity»)

«commissaire» Le commissaire à l'information et à la protection de la vie privée. («Commissioner»)

«commissaire adjoint» Un commissaire adjoint nommé en application de la Loi sur l'accès à l'information et la protection de la vie privée. («Assistant Commissioner»)

«fournisseur de services» S'entend notamment d'un organisme responsable désigné en vertu de l'article 29. («service provider»)

«incapable» S'entend d'une personne qui n'est pas capable. Le terme «incapacité» a un sens correspondant. («incapable», «incapacity»)

«instance» S'entend notamment d'une instance qui est tenue devant un tribunal judiciaire ou administratif, une commission, un juge de paix, un coroner, un comité d'un ordre au sens de la Loi de 1991 sur les professions de la santé réglementées, un comité de l'Ordre des travailleurs sociaux et des techniciens en travail social de l'Ontario visé par la Loi de 1998 sur le travail social et les techniques de travail social, un arbitre ou un médiateur ou qui est tenue conformément à leurs règles. («proceeding»)

«mandataire spécial» S'entend de quiconque est autorisé sous le régime de la présente partie à donner son consentement, au nom d'un particulier, à la collecte, à l'utilisation ou à la divulgation de renseignements personnels concernant ce particulier, ou à refuser ou à retirer un tel consentement. («substitute decision-maker»)

## Aide d'experts

(4) Le mandat peut autoriser des personnes qui possèdent des connaissances particulières, spécialisées ou professionnelles à accompagner l'inspecteur et à l'aider à exécuter le mandat.

## Expiration du mandat

(5) Le mandat décerné en vertu du présent article comporte une date d'expiration, qui ne doit pas tomber plus de 30 jours après le jour où le mandat a été décerné.

## Prorogation du délai

(6) Un juge peut reporter la date d'expiration du mandat décerné en vertu du présent article d'au plus 30 jours, sur demande sans préavis de l'inspecteur nommé dans le mandat.

## Recours à la force

(7) L'inspecteur nommé dans le mandat décerné en vertu du présent article peut recourir à toute la force nécessaire pour exécuter le mandat et peut se faire aider d'agents de la paix.

## Heures d'exécution

(8) Sauf indication contraire, le mandat décerné en vertu du présent article ne peut être exécuté qu'entre 8 et 20 heures.

## Autres questions

(9) Les paragraphes 273 (2) à (6) s'appliquent, avec les adaptations nécessaires, à l'égard de l'exercice des pouvoirs mentionnés au paragraphe (2) sous l'autorité d'un mandat décerné en vertu du présent article.

## Définition

(10) La définition qui suit s'applique au présent article.

«juge» Juge provincial ou juge de paix.

## Rapport d'inspection

275 (1) À l'issue de l'inspection, l'inspecteur rédige un rapport d'inspection et en remet une copie aux personnes suivantes :

a) le directeur;

b) le titulaire de permis;

c) toute autre personne prescrite.

## Documentation : non-conformité

(2) S'il conclut que le titulaire de permis ne s'est pas conformé à une exigence de la présente loi, aux règlements ou à une directive, l'inspecteur documente la non-conformité dans son rapport d'inspection.

## Admissibilité de certains documents

276 Les copies faites en vertu du paragraphe 273 (1) qui se présentent comme étant certifiées conformes aux originaux par l'inspecteur sont admissibles en preuve dans toute instance au même titre que les originaux et ont la même valeur probante que ceux-ci.

## INFRACTIONS

### Infractions

277 (1) Est coupable d'une infraction quiconque :

a) contrevient au paragraphe 241 (1) (permis exigé);

b) contrevient à l'article 242 (interdiction : infraction antérieure);

c) contrevient à l'article 243 (interdiction : laisser entendre qu'une personne est agréée);

d) contrevient au paragraphe 256 (3) (titulaire de permis : obligation de conformité au nombre maximal d'enfants);

e) contrevient à l'alinéa 266 b) (remise des dossiers);

f) fait en sorte qu'un enfant réçoive des soins dans un foyer pour enfants dont le fonctionnement est assuré par une personne qui n'est pas titulaire d'un permis à cet effet ou dans un autre lieu où sont fournis des soins en établissement par une personne qui doit être titulaire d'un permis à cet effet, mais qui ne l'est pas;

g) permet, à titre de parent d'un enfant ou de personne légalement tenue de subvenir aux besoins d'un enfant, que cet enfant réçoive des soins dans un foyer pour enfants ou dans un autre lieu visé à l'alinéa f);

h) ne se conforme pas à une ordonnance ou à une directive rendue ou donnée par un tribunal sous le régime de la présente partie;



- a) la nature des documents ou choses exigés;
- b) le moment où les documents ou choses doivent être produits.

#### **Production et aide obligatoires**

- (3) Si l'inspecteur demande formellement la production, pour inspection, de documents ou de choses, la personne qui en a la garde les produit dans les délais fixés dans la demande. Elle doit, si l'inspecteur le lui demande :
  - a) fournir l'aide qui est raisonnablement nécessaire pour produire le document ou la chose sous une forme lisible, notamment en recourant à un dispositif ou système de stockage, de traitement ou de récupération des données;
  - b) fournir l'aide qui est raisonnablement nécessaire pour fournir une interprétation du document ou de la chose à l'inspecteur.

#### **Droit d'un enfant de refuser d'être interrogé**

- (4) Malgré l'alinéa (1) g), un enfant peut refuser d'être interrogé par un inspecteur.

#### **Droit d'un enfant de rencontrer l'inspecteur**

- (4.1) L'inspecteur rencontre en privé un enfant qui reçoit des soins en établissement, dans l'endroit faisant l'objet de l'inspection, si l'enfant demande une telle rencontre.

#### **Pouvoir d'exclure des personnes**

- (5) L'inspecteur qui interroge une personne en vertu de l'alinéa (1) g) peut exclure des personnes de l'entretien, sauf l'avocat de la personne qu'il interroge.

#### **Restitution**

- (6) Les documents ou choses qui ont été enlevés pour examen ou copie sont :
  - a) mis à la disposition de la personne à qui ils ont été enlevés, à sa demande et aux date, heure et lieu qui lui conviennent et qui conviennent à l'inspecteur;
  - b) retournés à la personne dans un délai raisonnable.

#### **Mandat**

- 274 (1) L'inspecteur peut, sans préavis, demander à un juge de lui décerner un mandat en vertu du présent article.

#### **Mandat d'écrou**

- (2) Le juge peut décerner un mandat autorisant l'inspecteur qui y est nommé à entrer dans les locaux qui y sont précisés et à exercer l'un ou l'autre des pouvoirs mentionnés au paragraphe 273 (1) s'il est convaincu, sur la foi d'une dénonciation faite sous serment ou d'une affirmation solennelle :

- a) que les locaux sont, selon le cas :
  - (i) les locaux commerciaux d'un titulaire de permis,
  - (ii) un foyer pour enfants,
  - (iii) un lieu, autre qu'un foyer pour enfants, où sont fournis des soins en établissement en vertu d'un permis à cet effet,
  - (iv) un lieu où l'inspecteur a des motifs raisonnables de soupçonner que des soins en établissement sont fournis sans permis à cet effet, contrairement aux exigences de la présente partie;
- b) que, selon le cas :
  - (i) l'inspecteur s'est vu empêché d'exercer le droit d'entrée prévu à l'article 272 ou un pouvoir prévu au paragraphe 273 (1),
  - (ii) il existe des motifs raisonnables de croire que l'inspecteur se verra empêché d'exercer le droit d'entrée prévu à l'article 272 ou un pouvoir prévu au paragraphe 273 (1).

#### **Logements**

- (3) Le pouvoir, visé à l'alinéa (2) a), d'entrer dans un local avec mandat ne doit pas être exercé pour entrer dans un local servant de logement, sauf si les conditions suivantes sont réunies :
  - a) le juge est informé du fait que le mandat est demandé afin d'autoriser l'entrée dans un logement;
  - b) le juge autorise l'entrée de l'inspecteur dans le logement en question.

## Modification ou révocation d'une ordonnance

- b) soit de ne pas faire fonctionner un foyer pour enfants ou de ne pas fournir des soins en établissement pendant que le permis est suspendu en vertu de l'article 261.
- (2) Quiconque peut présenter une requête au tribunal pour qu'il modifie ou révoque l'ordonnance prévue au paragraphe (1).

## INSPECTIONS : DÉLIVRANCE DE PERMIS D'ÉTABLISSEMENT

### Nomination d'inspecteurs

- 270 (1) Le ministre peut nommer des inspecteurs pour l'application de la présente partie.

### Directeur en tant qu'inspecteur

- (2) Le directeur est d'office inspecteur.

### Pouvoirs et fonctions

- (3) L'inspecteur exerce les pouvoirs et fonctions énoncés dans la présente partie de même que les autres pouvoirs et fonctions prescrits.

### Limites

- (4) Le ministre peut limiter les pouvoirs d'entrée et d'inspection de l'inspecteur à des locaux déterminés.

### Attestation de nomination

- (5) Le ministre délivre à chaque inspecteur une attestation de sa nomination que l'inspecteur doit présenter, sur demande, lorsqu'il agit dans l'exercice de ses fonctions.

### Objet de l'inspection

- 271 L'inspecteur effectue des inspections afin de s'assurer de la conformité à la présente loi, aux règlements et aux directives.

### Inspections sans mandat

- 272 L'inspecteur peut, à toute heure raisonnable et sans mandat ou préavis, entrer dans les locaux suivants et les inspecter :

a) les locaux commerciaux d'un titulaire de permis;

b) les locaux d'un foyer pour enfants;

c) les locaux, à l'exception d'un foyer pour enfants, où sont fournis des soins en établissement en vertu d'un permis à cet effet;

d) les locaux où il a des motifs raisonnables de soupçonner que des soins en établissement sont fournis sans permis à cet effet, contrairement aux exigences de la présente partie.

### Pouvoirs de l'inspecteur

- 273 (1) Dans le cadre de son inspection, l'inspecteur peut :

a) examiner les services fournis;

b) examiner des documents ou des choses qui se rapportent à l'inspection;

c) demander formellement la production, pour inspection, de documents ou de choses qui se rapportent à l'inspection, y compris des documents ou des choses qui ne sont pas conservés dans les locaux;

d) après avoir donné un récépissé écrit à cet effet, enlever, pour examen ou copie, des documents ou des choses qui se rapportent à l'inspection;

e) afin de produire un document sous une forme lisible, recourir aux dispositifs ou systèmes de stockage, de traitement ou de récupération des données qui sont utilisés habituellement pour exercer des activités commerciales dans les locaux;

f) prendre des photos ou des films ou procéder à tout autre type d'enregistrement qui se rapporte à l'inspection, y compris d'enfants ou d'autres personnes dans les locaux, mais seulement d'une manière qui n'intercepte pas les communications privées et qui respecte des attentes raisonnables en matière de vie privée;

g) interroger des personnes, y compris des enfants, sur toute question qui se rapporte à l'inspection;

h) faire appel à des experts pour l'aider à effectuer son inspection;

i) exercer tout autre pouvoir prescrit.

### Demande

- (2) La demande formelle de production, pour inspection, de documents ou de choses peut être présentée oralement ou par écrit. Elle doit indiquer ce qui suit :

**Droit d'audience du ministre**  
(3) Le ministre, représenté notamment par un avocat, a le droit d'être entendu aux débats de l'appel en vertu du présent article.

## DROITS EXIGÉS PAR LE TITULAIRE DE PERMIS

### Droits

**265 (1)** Le titulaire de permis exige les droits indiqués dans les règlements ou calculés conformément à ceux-ci au titre de la prestation de soins en établissement en vertu d'un permis à cet effet.

### Exemption

(2) Un règlement peut, d'une part, soustraire un titulaire de permis ou une catégorie de titulaires de permis à l'application du paragraphe (1) et, d'autre part, prescrire les conditions et les circonstances applicables à une telle exemption.

## CÉSSATION DES ACTIVITÉS

### Remise du permis et des dossiers

**266** En cas de révocation ou de refus de renouvellement de son permis, ou s'il cesse de faire fonctionner un foyer pour enfants ou de fournir des soins en établissement, le titulaire de permis :

- a) remet promptement son permis au ministre;
- b) remet à une personne ou entité prescrite, dans le délai prescrit, tous les dossiers qui se trouvent en sa possession ou sous son contrôle et qui se rapportent aux enfants à qui des services étaient fournis.

### Avais à l'agence de placement ou à une autre personne : retrait d'enfants

**267** En cas de révocation, de suspension ou de refus de renouvellement d'un permis, ou si le titulaire de permis cesse de faire fonctionner un foyer pour enfants ou de fournir des soins en établissement :

- a) d'une part, le titulaire de permis avise promptement par écrit chaque agence de placement ou personne ayant un enfant placé dans le foyer pour enfants ou l'autre lieu où sont fournis des soins en établissement de la révocation du permis, de sa suspension, du refus de le renouveler ou de la cessation des activités;

- b) d'autre part, l'agence de placement ou la personne qui a placé un enfant prend des dispositions pour retirer l'enfant du foyer ou du lieu aussitôt que possible, compte tenu de l'intérêt véritable de l'enfant et le ministre peut l'aider à trouver un autre lieu de placement pour l'enfant.

## OCCUPATION PAR LE MINISTRE ET INJONCTIONS

### Ordre d'occupation

**268 (1)** Si l'avis d'intention du directeur de révoquer un permis ou de refuser de le renouveler, prévu à l'alinéa 260 (1) b), ou l'avis de suspension, prévu au paragraphe 261 (2), a été donné au titulaire de permis et que la question n'a pas encore été définitivement réglée, le ministre peut, sans préavis, présenter une requête à la Cour supérieure de justice pour qu'elle rende une ordonnance aux fins suivantes :

- a) autoriser le ministre, ou une personne qu'il a nommée, en attendant l'issue de l'instance et jusqu'à ce que d'autres locaux d'hébergement aient été trouvés à l'intention des enfants :
- (i) soit à occuper et à faire fonctionner le foyer pour enfants ou les locaux où sont fournis les soins en établissement,
- (ii) soit à fournir, directement ou indirectement, des soins en établissement;
- b) enjoindre à un agent de la paix d'aider le ministre, ou une personne qu'il a nommée, dans la mesure nécessaire, à occuper les locaux en application du sous-alinéa a) (i).

### Ordonnance de la Cour

(2) La Cour peut rendre l'ordonnance prévue au paragraphe (1) si elle est convaincue que la santé, la sécurité ou le bien-être des enfants l'exige.

### Gestion provisoire

(3) Si l'ordonnance prévue au sous-alinéa (1) a) (i) a été rendue, le ministre, ou la personne qu'il a nommée, peut, malgré les articles 25 et 39 de la *Loi sur l'expropriation*, occuper immédiatement les locaux et les faire fonctionner ou faire en sorte que quelqu'un les occupe et les fasse fonctionner pendant une période ne dépassant pas six mois.

### Injonction

**269 (1)** Le directeur peut présenter une requête à la Cour supérieure de justice pour qu'elle enjoigne à quelqu'un :

- a) soit de ne pas contrevenir à l'article 241 (permis exigé);



(iii) soit imposer les conditions qu'il juge appropriées;

(c) dans le cas où un permis est suspendu :

(i) soit confirmer la suspension,

(ii) soit enjoindre au directeur de prendre les mesures que le Tribunal juge appropriées, conformément à la présente partie et aux règlements.

### **Pouvoir discrétionnaire du Tribunal**

(6) Lorsqu'il rend l'ordonnance prévue à l'alinéa (5) a) ou c), le Tribunal peut substituer son opinion à celle du directeur.

### **Règles applicables aux instances**

#### **Parties**

**263 (1)** Les personnes suivantes sont parties à l'instance introduite sous le régime de la présente partie :

1. L'auteur de la demande ou le titulaire de permis qui demande l'audience.

2. Le directeur.

3. Les autres personnes que précise le Tribunal.

### **Interdiction de participer pour certains membres**

(2) Le membre du Tribunal qui a déjà pris part, avant l'audience, à une enquête ou à une étude relative à la question en litige qui se rapporte à l'auteur de la demande ou au titulaire de permis ne doit pas participer à l'audience.

### **Aucune discussion**

(3) Le membre du Tribunal qui prend part à une audience ne doit pas communiquer au sujet de la question en litige avec qui que ce soit, sauf un autre membre, un avocat qui n'est pas l'avocat d'une partie ou un employé du Tribunal, si ce n'est après en avoir avisé toutes les parties et leur avoir fourni l'occasion de participer.

### **Conseils juridiques de personnes indépendantes**

(4) Le Tribunal peut demander des conseils juridiques auprès de personnes indépendantes au sujet de la question en litige. Dans ce cas, il doit divulguer la teneur des conseils reçus aux parties pour leur permettre d'y répondre.

### **Examen de la preuve documentaire**

(5) Une partie à une instance introduite sous le régime de la présente partie doit avoir la possibilité d'examiner, avant l'audience, la preuve écrite ou documentaire qui y sera produite et le rapport dont le contenu y sera présenté en preuve.

### **Processus décisionnel limité aux membres présents à toute l'audience**

(6) Aucun membre du Tribunal ne doit prendre part à la décision que le Tribunal rend sous le régime de la présente partie s'il n'a pas assisté à toute l'audience et entendu la preuve et les plaidoiries des parties.

### **Processus décisionnel assujéti à la participation de tous les membres présents à l'audience**

(7) Sauf si les parties y consentent, le Tribunal ne doit pas rendre de décision sous le régime de la présente partie, à moins que tous les membres présents à l'audience n'y prennent part.

### **Décision définitive du Tribunal sous 90 jours**

(8) Malgré l'article 21 de la *Loi sur l'exercice des compétences légales*, le Tribunal doit rendre une décision définitive et en aviser les parties dans les 90 jours qui suivent le jour où il a reçu la demande d'audience de l'auteur de la demande ou du titulaire de permis en vertu du paragraphe 262 (2) de la présente loi.

## **APPELS**

### **Appel de la décision du Tribunal**

**264 (1)** Toute partie à une audience devant le Tribunal tenue sous le régime de la présente partie peut interjeter appel de la décision du Tribunal devant la Cour divisionnaire.

### **Dossier déposé devant le tribunal**

(2) Si un avis d'appel est signifié en vertu du présent article, le Tribunal dépose promptement auprès du tribunal le dossier de l'instance à la suite de laquelle a été rendue la décision portée en appel.

### **Droit d'audience du ministre**

(3) Le ministre a le droit d'être entendu, notamment par l'intermédiaire d'un avocat, aux débats de l'appel.

**Contenu de l'avis**  
(2) L'avis d'intention énonce les motifs de la mesure envisagée et indique que l'auteur de la demande ou le titulaire de permis a droit à une audience devant le Tribunal s'il en demande une conformément au paragraphe 262 (2).

**Suspension**  
261 (1) Le directeur peut suspendre un permis si, à son avis, la manière dont le foyer pour enfants fonctionne ou dont les soins en établissement sont fournis constitue un danger immédiat pour la santé, la sécurité ou le bien-être des enfants.

#### Avis

(2) Le directeur avise le titulaire de permis par écrit de la suspension.

#### Contenu de l'avis

(3) L'avis énonce les motifs de la suspension du permis et indique que le titulaire de permis a droit à une audience devant le Tribunal s'il en demande une conformément au paragraphe 262 (2).

#### Prise d'effet de la suspension sur avis

(4) La suspension du permis prend effet dès que le titulaire de permis reçoit l'avis prévu. Une demande d'audience devant le Tribunal n'a pas pour effet de surseoir à la suspension du permis.

#### Demande interdite

(5) La personne dont le permis est suspendu ne peut présenter une demande de permis au directeur pendant la suspension.

#### AUDIENCES DEVANT LE TRIBUNAL

#### Audiences devant le Tribunal

**262 (1)** L'auteur d'une demande ou le titulaire de permis à qui le directeur donne l'un ou l'autre des avis suivants peut demander une audience devant le Tribunal conformément au paragraphe (2) :

1. Un avis d'intention de refuser de délivrer un permis en vertu de l'article 258.

2. Un avis d'intention de révoquer ou de refuser de renouveler un permis en vertu de l'article 259.

3. Un avis visant à assortir un permis de conditions ou à modifier des conditions en vertu de l'article 252.

4. Un avis visant à suspendre un permis en vertu de l'article 261.

#### Demande d'audience

(2) L'auteur de la demande ou le titulaire de permis peut demander une audience en donnant un avis écrit à cet effet au directeur qui a donné l'avis prévu au paragraphe (1) et au Tribunal :

a) dans le cas d'un avis visant à assortir un permis de conditions ou à modifier des conditions, dans les 15 jours après que l'avis a été donné à la personne;

b) dans le cas de tous les autres avis, dans les 10 jours après que l'avis a été donné à la personne.

#### Aucune demande d'audience

(3) Si l'auteur de la demande ou le titulaire de permis à qui est donné un avis d'intention de refuser de délivrer un permis, de révoquer un permis ou de refuser de renouveler un permis ne demande pas d'audience conformément au paragraphe (2), le directeur peut donner suite à son intention.

#### Audience

(4) Si l'auteur de la demande ou le titulaire de permis demande une audience conformément au paragraphe (2), le Tribunal tient une audience après en avoir fixé la date et l'heure.

#### Pouvoirs du Tribunal

(5) Après avoir tenu l'audience, le Tribunal peut, par ordonnance :

a) dans le cas où le directeur a l'intention de refuser de délivrer un permis, de révoquer un permis ou de refuser de renouveler un permis :

(i) soit enjoindre au directeur de donner suite à son intention,

(ii) soit enjoindre au directeur de prendre les mesures que le Tribunal juge appropriées, conformément à la présente partie et aux règlements;

b) dans le cas où le directeur assortit un permis de conditions ou modifie des conditions :

(i) soit confirmer tout ou partie des conditions,

(ii) soit annuler tout ou partie des conditions,

## Refus et révocations

### Intention de refuser de délivrer un permis

**258** Le directeur peut avoir l'intention de refuser de délivrer un permis si, à son avis, un des cas suivants se présente :

- a) l'auteur de la demande ou un de ses employés ou, si l'auteur de la demande est une personne morale, un de ses dirigeants ou administrateurs, n'a pas les compétences voulues pour faire fonctionner un foyer pour enfants ou pour fournir des soins en établissement, selon le cas, de manière responsable conformément à la présente loi, aux règlements ou à toute autre loi applicable;

- b) la conduite antérieure d'une personne mentionnée à l'alinéa a) offre des motifs raisonnables de croire que le foyer pour enfants ne fonctionnera pas de manière responsable conformément à la présente loi, aux règlements ou à toute autre loi applicable ou que les soins en établissement ne seront pas fournis d'une telle manière;

- c) les locaux où l'auteur de la demande a l'intention de faire fonctionner le foyer pour enfants ou de fournir des soins en établissement ne sont pas conformes aux exigences de la présente loi, des règlements ou de toute autre loi applicable;

- d) une personne a fait une fausse déclaration dans la demande de permis ou dans un rapport, un document ou d'autres renseignements qui doivent être fournis en application de la présente loi, des règlements ou de toute autre loi applicable;

- e) un permis détenu par l'auteur de la demande a été révoqué ou le renouvellement d'un tel permis a été refusé et il n'y a pas eu de changement important dans la situation de l'auteur de la demande;

- f) un motif prescrit justifie le refus de délivrer un permis.

### Intention de révoquer le permis ou de refuser de le renouveler

**259** Le directeur peut avoir l'intention de révoquer ou de refuser de renouveler un permis si, à son avis, un des cas suivants se présente :

- a) le titulaire de permis ou un de ses employés ou, si le titulaire de permis est une personne morale, un de ses dirigeants ou administrateurs, a contrevenu ou a sciemment permis à un préposé ou à un associé de contrevenir, selon le cas :

- (i) à la présente loi ou aux règlements,

- (ii) à toute autre loi applicable,

- (iii) à une condition du permis;

- b) la conduite d'une personne mentionnée à l'alinéa a) offre des motifs raisonnables de croire que, selon le cas :

- (i) la personne n'a pas les compétences voulues pour faire fonctionner un foyer pour enfants ou pour fournir des soins en établissement de manière responsable conformément à la présente loi, aux règlements ou à toute autre loi applicable,

- (ii) le foyer pour enfants ou l'autre lieu où sont fournis des soins en établissement ne fonctionnera pas conformément à la présente loi, aux règlements ou à toute autre loi applicable;

- c) les locaux où se trouve le foyer pour enfants ou où sont fournis les soins en établissement ne sont pas conformes aux exigences de la présente partie, des règlements ou de toute autre loi applicable;

- d) le fonctionnement du foyer pour enfants ou la prestation de soins en établissement est assuré d'une manière préjudiciable à la santé, à la sécurité ou au bien-être des enfants;

- e) une personne a fait une fausse déclaration dans la demande de permis ou de renouvellement de permis, ou dans un rapport ou un document qui doit être fourni en application de la présente loi, des règlements ou de toute autre loi applicable;

- f) un changement au sein du personnel, de la direction ou du conseil d'administration du titulaire de permis constituerait un motif prévu à l'alinéa 258 b) pour refuser de délivrer le permis, si celui-ci était toujours à l'étape de la demande;

- g) un motif prescrit justifie le refus de renouveler le permis ou sa révocation.

### Avis d'intention

**260** (1) Le directeur avise par écrit l'auteur de la demande ou le titulaire de permis, selon le cas, de son intention :

- a) soit de refuser de délivrer le permis en vertu de l'article 258;

- b) soit de révoquer le permis ou de refuser de le renouveler en vertu de l'article 259.



**Contenu de l'avis**

(4) L'avis énonce les motifs de l'imposition de conditions ou de la modification de conditions et indique que le titulaire de permis a droit à une audience devant le Tribunal s'il en demande une conformément au paragraphe 262 (2).

**Prise d'effet des conditions sur avis**

(5) L'imposition ou la modification de conditions prend effet dès que le titulaire de permis reçoit l'avis. Une demande d'audience devant le Tribunal n'a pas pour effet de surseoir à l'imposition ou à la modification des conditions.

**Titulaire du permis : obligation de conformité aux conditions**

(6) Le titulaire de permis doit se conformer aux conditions dont est assorti le permis.

#### **Durée du permis**

**253 (1)** Le permis est délivré ou renouvelé :

a) pour la durée précisée par le directeur conformément aux règlements;

b) à défaut de règlement régissant la durée, pour la durée précisée par le directeur qui ne dépasse pas un an.

#### **Expiration**

(2) Le permis expire à la fin de la durée précisée, sauf s'il est réputé demeurer en vigueur en application de l'article 254.

#### **Révocation pour un motif suffisant**

(3) Le présent article n'a pas pour effet d'empêcher qu'un permis soit révoqué ou suspendu.

#### **Validité du permis en attendant son renouvellement**

**254** Sous réserve d'une suspension prononcée en vertu de l'article 261, si le titulaire d'un permis en a demandé le renouvellement et a acquitté les droits prescrits avant l'expiration du permis, le permis est réputé demeurer en vigueur :

a) jusqu'à ce que le renouvellement soit accordé;

b) jusqu'à ce qu'expire le délai prévu pour demander une audience devant le Tribunal, si le titulaire de permis reçoit un avis indiquant que le directeur a l'intention de révoquer ou de refuser de renouveler le permis en vertu de l'article 259. et, si une audience est demandée, jusqu'à ce que le Tribunal rende sa décision.

#### **Catégorie de permis**

**255** Le directeur peut attribuer une catégorie à un permis conformément aux règlements :

a) à la délivrance ou au renouvellement du permis;

b) à tout autre moment, si les règlements l'y autorisent.

#### **Nombre maximal d'enfants**

**256 (1)** Lorsqu'il délivre ou renouvelle un permis, le directeur peut indiquer sur le permis le nombre maximal d'enfants à qui le titulaire de permis peut fournir des soins en établissement dans le foyer pour enfants ou dans le lieu où de tels soins sont fournis.

#### **Modification du nombre maximal**

(2) Le directeur peut à tout moment modifier le nombre maximal d'enfants indiqué sur le permis.

#### **Modification du nombre maximal d'enfants**

(2) Le directeur peut à tout moment, moyennant un préavis raisonnable dans les circonstances donné au titulaire de permis, modifier le nombre maximal d'enfants indiqué sur le permis.

#### **Titulaire de permis : obligation de conformité au nombre maximal d'enfants**

(3) Le titulaire de permis ne doit pas admettre dans le foyer pour enfants ou dans l'autre lieu où sont fournis des soins en établissement un nombre d'enfants supérieur au nombre maximal indiqué sur le permis, sauf si l'admission est approuvée par le directeur pour une période précisée.

#### **Appel de la catégorie ou du nombre maximal**

**257** Si les règlements l'y autorisent, le titulaire de permis peut, conformément aux règlements :

a) demander que le Tribunal examine :

(i) soit la catégorie attribuée à un permis en vertu de l'article 255,

(ii) soit le nombre maximal d'enfants indiqué sur un permis en vertu de l'article 256;

b) interjeter appel de la décision du Tribunal devant la Cour divisionnaire.

4. La durée du permis précisée en vertu de l'article 253.

5. La catégorie éventuellement attribuée au permis en vertu de l'article 255.

6. Le nombre maximal d'enfants, indiqué sur le permis en application de l'article 256, à qui le titulaire de permis peut fournir des soins en établissement.

7. Les renseignements relatifs aux programmes et services devant être fournis en vertu du permis.

8. Un résumé de chaque intention de refuser de délivrer un permis en vertu de l'article 258, ou de l'article 195 de l'ancienne loi, ou de révoquer ou de refuser de renouveler un permis en vertu de l'article 259, ou de l'article 196 de l'ancienne loi, sauf s'il n'a pas été donné suite au refus ou à la révocation du permis.

9. Un résumé de chaque avis de suspension signifié en vertu de l'article 261, ou de l'article 200 de l'ancienne loi.

10. Les droits qu'exige le titulaire de permis en application de l'article 265 au titre de la prestation de soins en établissement.

11. Un résumé de chaque rapport d'inspection rédigé en vertu de l'article 275.

12. Tout autre renseignement prescrit qui se rapporte aux permis.

### Permis non valide

(2) Le pouvoir prévu au paragraphe (1) comprend le pouvoir de publier des renseignements relatifs aux permis qui ne sont plus valides.

### Manière

(3) Le ministre peut publier les renseignements de la manière ou sur le support qu'il estime approprié.

### PERMIS

### Délivrance et renouvellement de permis

#### Demande

251 (1) Une personne peut présenter une demande de permis ou de renouvellement d'un permis pour faire fonctionner un foyer pour enfants ou fournir des soins en établissement en remettant les documents et droits suivants au directeur :

a) une demande rédigée sous une forme approuvée par le ministre;

b) une attestation, qu'elle doit remplir sous une forme approuvée par le ministre, confirmant qu'il ne lui est pas interdit par l'article 242 de faire fonctionner un foyer pour enfants ou de fournir des soins en établissement en vertu d'un permis à cet effet;

c) tout autre renseignement ou document précisé par le ministre;

d) les droits prescrits.

#### Exigences supplémentaires

(2) L'auteur d'une demande de permis ou de renouvellement d'un permis doit, sauf s'il retire sa demande, se conformer aux autres exigences prescrites et aux directives qui se rapportent au processus de demande.

#### Directeur : obligation de délivrance ou de renouvellement d'un permis

(3) Le directeur doit délivrer ou renouveler un permis si l'auteur de la demande a présenté sa demande conformément aux paragraphes (1) et (2), sauf dans les cas suivants :

a) le directeur a l'intention de refuser de le faire conformément à l'article 258 ou 259;

b) l'auteur de la demande a moins de 18 ans, est une société de personnes ou est une association de personnes.

#### Inaccessibilité du permis

(4) Le permis est inaccessible.

#### Conditions du permis

252 (1) Lorsqu'il délivre ou renouvelle un permis, ou à tout autre moment, le directeur peut assortir le permis des conditions qu'il juge appropriées.

#### Modification des conditions

(2) Le directeur peut, à tout moment, modifier les conditions d'un permis.

#### Avis

(3) S'il assortit le permis de conditions ou qu'il modifie des conditions, le directeur en avise le titulaire de permis par écrit.

1. Une copie du permis autorisant le fonctionnement du foyer pour enfants ou la prestation de soins en établissement, selon le cas.
  2. Tout autre renseignement prescrit.
- Dossier de conformité**
- (2) Le titulaire de permis crée et conserve un dossier de sa conformité au paragraphe (1) :
    - a) dans le cas d'un foyer pour enfants, dans le foyer;
    - b) dans le cas de tout autre lieu où sont fournis des soins en établissement en vertu d'un permis à cet effet, dans ses locaux commerciaux ou dans les autres locaux prescrits.
- Signallement de certains faits au directeur**
- 247 (1)** La personne prescrite qui, dans le cadre de son emploi, apprend qu'il y a des motifs raisonnables de soupçonner l'existence d'un danger immédiat pour la santé, la sécurité ou le bien-être d'un enfant placé dans un foyer pour enfants ou dans un autre lieu où sont fournis des soins en établissement en vertu d'un permis à cet effet signale immédiatement ses soupçons et les renseignements sur lesquels ils sont fondés au directeur.
- Inspection**
- (2) Si des soupçons lui sont signalés en application du paragraphe (1), le directeur fait effectuer une inspection ou mener une enquête par un inspecteur en vue d'assurer la conformité à la présente loi, aux règlements et aux directives.
  - (3) Le présent article n'a aucune incidence sur le secret professionnel de l'avocat.
- Obligation de déclaration**
- (4) Le présent article n'a aucune incidence sur l'obligation de déclarer des soupçons prévue à l'article 122.
- Exemption par un directeur**
- 248** Le directeur peut, dans les circonstances prescrites, soustraire les personnes et lieux suivants à l'application de toute disposition de la présente partie, des règlements pris en vertu de celle-ci ou d'une directive pendant la période et sous réserve des conditions qu'il précise :
1. Un lieu ou une catégorie de lieux où sont fournis des soins en établissement en vertu d'un permis à cet effet.
  2. Une personne ou une catégorie de personnes qui fournissent des soins en établissement en vertu d'un permis à cet effet ou qui présentent une demande de permis en ce sens.
- Directives du ministre**
- 249 (1)** Le ministre peut donner des directives aux titulaires de permis à l'égard de toute question prescrite.
- Caractère contraignant des directives**
- (2) Le titulaire de permis doit se conformer aux directives que lui donne le ministre en vertu du présent article.
- Portée générale ou particulière**
- (3) Les directives peuvent avoir une portée générale ou particulière.
- Primauté du droit**
- (4) Il est entendu que, en cas d'incompatibilité entre une directive donnée en vertu du présent article et une disposition de toute loi applicable ou règle de toute loi applicable, la disposition ou la règle l'emporte.
  - (5) Le ministre met chaque directive donnée en vertu du présent article à la disposition du public.
- Non-application de la Loi de 2006 sur la législation**
- (6) La partie III (Règlements) de la Loi de 2006 sur la législation ne s'applique pas aux directives données en vertu du présent article.
- Publication de renseignements par le ministre**
- 250 (1)** Le ministre peut publier les renseignements suivants à l'égard des permis et des demandes de permis :
1. Le nom du titulaire de permis et les coordonnées prescrites.
  2. Le nom du foyer pour enfants ou du lieu où sont fournis des soins en établissement.
  3. Les conditions dont le permis est éventuellement assorti en vertu de l'article 252.



2. Un foyer avec rotation de personnel comptant trois enfants ou plus qui n'ont pas de liens de famille, y compris un établissement dont une société assure la surveillance ou le fonctionnement ou encore un lieu de détention provisoire ou de garde en milieu fermé ou en milieu ouvert.

3. Tout autre foyer prescrit.

Les lieux suivants ne sont pas des foyers pour enfants :

4. Une maison agréée en vertu de la *Loi sur les hôpitaux privés*.
5. Un centre de garde au sens de la *Loi de 2014 sur la garde d'enfants et la petite enfance*.
6. Un camp de loisirs régi par la *Loi sur la protection et la promotion de la santé*.
7. Un foyer de soins spéciaux au sens de la *Loi sur les foyers de soins spéciaux*.
8. Une école ou une école privée au sens de la *Loi sur l'éducation*.
9. Un centre d'accueil pour séjour de courte durée.
10. Un hôpital qui reçoit une aide financière du gouvernement de l'Ontario.
11. Un foyer de groupe ou un établissement semblable qui reçoit une aide financière du ministre de la Sécurité communautaire et des Services correctionnels, mais qui ne reçoit aucune aide du ministre en vertu de la présente loi.
12. Tout autre lieu prescrit. («children's residence»)

## MESURES DE PROTECTION

### Permis exigé

**241** Nul ne doit faire ce qui suit sans permis à cet effet :

1. Faire fonctionner un foyer pour enfants.
2. Fournir des soins en établissement, directement ou indirectement, dans des lieux qui ne sont pas des foyers pour enfants :
- i. à trois enfants ou plus qui n'ont pas de liens de famille,
- ii. dans les circonstances prescrites.

### Interdiction : infraction antérieure

**242** Nul ne doit faire fonctionner un foyer pour enfants ou fournir des soins en établissement en vertu d'un permis à cet effet s'il a été déclaré coupable d'une infraction prescrite.

### Interdiction : laisser entendre qu'une personne est agréée

**243** Nul ne doit, expressément ou implicitement, affirmer ou laisser entendre qu'il est agréé pour faire fonctionner un foyer pour enfants ou pour fournir des soins en établissement, à moins d'y être autorisé.

### Placements conformes à la Loi et aux règlements

**244** Aucun titulaire de permis ne doit placer un enfant dans un foyer pour enfants ou un autre lieu où sont fournis des soins en établissement, si ce n'est conformément à la présente loi, aux règlements et aux directives.

### Obligation de conserver un permis

**245** (1) Le titulaire de permis conserve une copie de son permis dans les locaux suivants et veille à ce que le permis soit mis à la disposition du public pour consultation :

1. Dans le cas d'un foyer pour enfants, dans le foyer.
  2. Dans le cas de tout autre lieu où sont fournis des soins en établissement en vertu d'un permis à cet effet, dans ses locaux commerciaux ou dans les autres locaux prescrits.
- Obligation d'afficher certains renseignements**
- (2) Le titulaire de permis affiche les renseignements prescrits dans un endroit bien en vue au foyer pour enfants ou dans un autre lieu où sont fournis des soins en établissement en vertu d'un permis à cet effet.

### Obligation de fournir un permis et d'autres renseignements

**246** (1) Avant de placer un enfant dans un foyer pour enfants ou dans un autre lieu où sont fournis des soins en établissement en vertu d'un permis à cet effet, le titulaire de permis donne ce qui suit à l'agence de placement, si celle-ci n'est pas le titulaire de permis, ou à la personne qui place l'enfant :

- (d) les dépenses prescrites qu'engage le titulaire de permis ou les dépenses plus élevées qu'approuve le directeur;
- (e) les frais de justice et débours normaux;
- (f) la subvention que verse une société ou le ministre à un parent adoptif ou à une personne auprès de qui l'enfant est placé en vue de son adoption.

#### **Infractions**

- 238 (1) Sont coupables d'une infraction et passibles, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$ et d'un emprisonnement d'au plus deux ans, ou d'une seule de ces peines, quiconque contrevient au paragraphe 180 (1), (2), (3) ou (4) (placement en vue de l'adoption) et l'employé d'une personne morale qui autorise ou permet cette convention, ou y participe, qu'une ordonnance portant sur l'adoption de l'enfant soit rendue ou non par la suite.
- Idem**
- (2) Est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$ et d'un emprisonnement d'au plus deux ans, ou d'une seule de ces peines, quiconque contrevient au paragraphe 180 (5) (acceptation de recevoir l'enfant).
- Idem**
- (3) Est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$ et d'un emprisonnement d'au plus un an, ou d'une seule de ces peines, quiconque contrevient au paragraphe 188 (2) (ingérence dans la vie de l'enfant).
- Idem**
- (4) Sont coupables d'une infraction et passibles, sur déclaration de culpabilité, d'une amende d'au plus 25 000 \$ et d'un emprisonnement d'au plus trois ans, ou d'une seule de ces peines, quiconque contrevient à l'article 237 et l'administrateur, le dirigeant ou l'employé d'une personne morale qui autorise ou permet cette convention, ou y participe.

#### **Délai de prescription**

- (5) Aucune instance ne peut être introduite en vertu du paragraphe (1), (2) ou (4) plus de deux ans après le jour où l'infraction a été ou aurait été commise.

#### **Infractions : délivrance de permis**

- 239 (1) Est coupable d'une infraction quiconque, selon le cas :
  - a) fournit sciemment de faux renseignements dans une demande de permis ou une demande de renouvellement de permis présentée sous le régime de la présente partie ou dans une déclaration, un rapport ou un état exigé en application de la présente partie ou des règlements à l'égard d'une question se rapportant aux permis;
  - b) ne respecte pas une ordonnance rendue ou une directive donnée sous le régime de la présente partie par un tribunal à l'égard d'une question se rapportant aux permis.

#### **Administrateurs, dirigeants et employés**

- (2) Est coupable d'une infraction l'administrateur, le dirigeant ou l'employé d'une personne morale qui autorise ou permet la commission, par la personne morale, d'une infraction prévue au paragraphe (1) ou y participe.

#### **Peine**

- (3) Quiconque est déclaré coupable d'une infraction prévue au présent article est passible d'une amende d'au plus 5 000 \$.

### **PARTIE IX**

### **PERMIS D'ÉTABLISSEMENT**

#### **Définitions**

- 240 Les définitions qui suivent s'appliquent à la présente partie.
- «agence de placement» ~~Société ou autre personne morale~~ Personne ou entité, y compris une société, qui place un enfant dans un établissement ou une famille d'accueil. S'entend en outre d'un titulaire de permis. («placing agency»)
- «directive» Directive que donne le ministre en vertu de l'article 249. («directive»)
- «foyer avec rotation de personnel» Bâtiment, en tout ou en partie, ou groupe de bâtiments où des adultes sont employés pour fournir des soins à des enfants pendant des périodes de service prévues. («staff model residence»)
- «foyer de type familial» Bâtiment, en tout ou en partie, ou groupe de bâtiments où résident tout au plus deux adultes qui fournissent des soins continus à des enfants. («parent model residence»)
- «foyer pour enfants» S'entend de l'un ou l'autre des foyers suivants où des enfants résident et reçoivent des soins en établissement :
- 1. Un foyer de type familial comptant cinq enfants ou plus qui n'ont pas de liens de famille.

**Pouvoirs du Tribunal**

(2) Si le titulaire de permis demande une audience en vertu du paragraphe (1), le Tribunal tient une audience après en avoir fixé la date et l'heure. Il peut, à l'audience :

a) confirmer tout ou partie des conditions;

b) annuler tout ou partie des conditions;

c) imposer les autres conditions qu'il juge appropriées.

**Permis valide en attendant le renouvellement**

232 Sous réserve de l'article 233, si dans le délai imparti ou, si aucun délai n'est imparti, avant la date d'expiration du permis, le titulaire de permis en demande le renouvellement et acquitte les droits prescrits, le permis est réputé valide :

a) jusqu'à ce que le renouvellement soit accordé;

b) jusqu'à l'expiration du délai pour demander une audience, si le titulaire de permis reçoit un avis d'intention du directeur de révoquer le permis ou de ne pas le renouveler et, en cas d'audience, jusqu'au moment où le Tribunal rend sa décision.

**Suspension du permis**

233 (1) Le directeur peut suspendre le permis en remettant un avis écrit à cet effet au titulaire de permis s'il est d'avis que la manière dont les enfants sont placés en vue de leur adoption par le titulaire de permis constitue un danger immédiat pour la santé, la sécurité ou le bien-être des enfants.

**Entrée en vigueur de la suspension**

(2) La suspension entre en vigueur dès que le titulaire du permis reçoit l'avis. La demande d'audience devant le Tribunal n'a pas pour effet de surseoir à l'exécution de la suspension.

**Application des paragraphes 230 (2) à (4)**

(3) En cas de remise d'un avis en vertu du paragraphe (1), les paragraphes 230 (2), (3) et (4) s'appliquent avec les adaptations nécessaires.

**Application d'autres dispositions**

234 Les articles 263 et 264 s'appliquent, avec les adaptations nécessaires, aux instances introduites devant le Tribunal sous le régime de la présente partie et aux appels de ses ordonnances.

**PERMIS — REMISE DU PERMIS ET DES DOSSIERS****Permis et dossiers remis**

235 Si un permis est révoqué ou que son renouvellement est refusé, ou si un titulaire de permis cesse de placer des enfants en vue de leur adoption, le titulaire de permis :

a) remet promptement son permis au ministre;

b) remet à une personne prescrite ou à une entité prescrite, dans le délai prescrit, tous les dossiers qui se trouvent en sa possession ou sous son contrôle et qui se rapportent aux enfants à qui des services étaient fournis.

**PERMIS — INJONCTIONS****Injonction**

236 (1) Le directeur peut présenter une requête à la Cour supérieure de justice pour qu'elle enjoigne au titulaire de permis, par voie d'ordonnance, de ne pas placer d'enfants en vue de leur adoption pendant la suspension de son permis en application de l'article 233.

**Modification ou annulation de l'ordonnance**

(2) Le titulaire de permis peut présenter une requête au tribunal pour que celui-ci modifie ou annule, par voie d'ordonnance, l'ordonnance visée au paragraphe (1).

**INFRACTIONS****Adoption d'un enfant : paiements interdits**

237 Nul ne doit, avant ou après la naissance d'un enfant, effectuer ou recevoir, ni accepter d'effectuer ou de recevoir, un paiement ou une récompense de quelque type que ce soit en ce qui concerne, selon le cas :

a) l'adoption de l'enfant ou son placement en vue d'une adoption;

b) un consentement à l'adoption de l'enfant en vertu de l'article 177;

c) des négociations entreprises ou des mesures prises dans le dessein de faire adopter l'enfant.

Sont toutefois exclus :



- a) l'auteur de la demande ou un de ses employés ou, si l'auteur de la demande est une personne morale, un de ses dirigeants ou administrateurs ne possède pas les qualités requises pour placer un enfant en vue de son adoption de manière responsable et conformément à la présente loi et aux règlements;
- b) la conduite antérieure de toute personne visée à l'alinéa a) offre des motifs raisonnables de croire que le placement d'enfants en vue de leur adoption ne sera pas effectué de manière responsable et conformément à la présente loi et aux règlements;
- c) il existe un motif prescrit comme motif justifiant le refus de délivrer le permis.

#### **Motifs de révocation ou de refus de renouvellement d'un permis**

- 229 Le directeur peut proposer de révoquer un permis ou de refuser de le renouveler s'il est d'avis que, selon le cas :
- a) le titulaire de permis ou un de ses employés ou, si le titulaire de permis est une personne morale, un de ses dirigeants ou administrateurs a contrevenu ou a sciemment permis à quiconque agit sous son contrôle ou sa direction ou est un associé de contrevenir :

- (i) soit à la présente loi ou aux règlements,
- (ii) soit à toute autre règle de droit applicable,
- (iii) soit à une condition du permis;

- b) le placement d'enfants en vue de leur adoption est effectué d'une manière qui nuit à leur santé, à leur sécurité ou à leur bien-être;

- c) la demande de permis ou de renouvellement de permis, ou un rapport ou un document devant être fournis conformément à la présente loi, aux règlements ou à toute autre règle de droit applicable, renferme une fausse déclaration;

- d) un changement au sein du personnel, de la direction ou du conseil d'administration du titulaire de permis fournirait un motif pour refuser de délivrer le permis en vertu de l'alinéa 228 b) si le permis était toujours à l'étape de la demande;
- e) il existe un motif prescrit comme motif justifiant la révocation du permis ou le refus de le renouveler.

#### **PERMIS — AUDIENCE DU TRIBUNAL**

#### **Audiences : articles 228 ou 229**

#### **Avis du directeur**

- 230 (1) Si le directeur propose de refuser de délivrer un permis en vertu de l'article 228 ou de révoquer un permis ou de refuser de le renouveler en vertu de l'article 229, il en avise l'auteur de la demande ou le titulaire de permis par écrit.

#### **Demande d'audience**

- (2) L'avis prévu au paragraphe (1) doit être motivé et doit préciser que l'auteur de la demande ou le titulaire de permis a droit à une audience devant le Tribunal s'il remet une demande écrite à cet effet au directeur et au Tribunal dans les 10 jours suivant la remise de l'avis.

#### **Pouvoirs du directeur : aucune demande d'audience**

- (3) Si l'auteur de la demande ou le titulaire de permis ne demande pas une audience en vertu du paragraphe (2), le directeur peut donner suite à ce qu'il propose.

#### **Pouvoirs du Tribunal : audience demandée**

- (4) Si l'auteur de la demande ou le titulaire de permis demande une audience en vertu du paragraphe (2), le Tribunal tient une audience après en avoir fixé la date et l'heure. Il peut, à l'audience :

- a) soit ordonner au directeur de donner suite à ce qu'il propose;
- b) soit lui ordonner de prendre les autres mesures que le Tribunal juge appropriées, conformément à la présente partie et aux règlements.

#### **Pouvoir discrétionnaire du Tribunal**

- (5) Lorsqu'il rend une ordonnance en vertu du paragraphe (4), le Tribunal peut substituer son opinion à celle du directeur.

#### **Révocation des conditions du permis**

- 231 (1) Le titulaire de permis qui n'est pas satisfait des conditions imposées par le directeur en vertu du paragraphe 226 (2), (4) ou (5) ou de l'article 227 a droit à une audience devant le Tribunal s'il remet une demande écrite à cet effet au directeur et au Tribunal dans les 15 jours suivant la réception du permis.

**Permis****Permis exigé**

**226** (1) Nul ne doit, à l'exception d'une société, placer un enfant en vue de son adoption si ce n'est en vertu d'un permis à cet effet délivré par le directeur.

**Délivrance du permis**

(2) Sous réserve de l'article 228, le directeur délivre un permis à quiconque en fait la demande conformément à la présente partie et aux règlements et acquitte les droits prescrits. Il peut assortir le permis de conditions.

**Particulier ou agence sans but lucratif seulement**

(3) Malgré le paragraphe (2), le permis ne doit être délivré qu'à un particulier ou à une agence sans but lucratif.

**Renouvellement du permis**

(4) Sous réserve de l'article 229, le directeur renouvelle un permis si le titulaire en fait la demande conformément à la présente partie et aux règlements et acquitte les droits prescrits. Il peut assortir le permis de conditions.

**Permis provisoire ou renouvellement**

(5) Si l'auteur d'une demande de délivrance de permis ou de renouvellement d'un permis ne satisfait pas à toutes les exigences prévues et a besoin d'un délai pour y satisfaire, le directeur peut, sous réserve des conditions qu'il peut imposer, délivrer un permis provisoire couvrant la période qu'il juge nécessaire pour donner à l'auteur de la demande la possibilité de satisfaire aux exigences.

**Incessibilité du permis**

(6) Un permis est incessible.

**Définition**

(7) La définition qui suit s'applique au présent article.

«agence sans but lucratif» Personne morale sans capital-actions qui a des objets de bienfaisance et qui satisfait à l'une des conditions suivantes :

- a) elle est régie par la partie III de la *Loi sur les personnes morales*;
- b) elle est constituée sous le régime d'une loi générale ou spéciale du Parlement du Canada.

**Conditions**

**227** À tout moment pendant la période de validité d'un permis, le directeur peut assortir le permis de conditions ou modifier les conditions dont il est assorti.

**Conditions du permis**

**227** (1) Lorsqu'il délivre ou renouvelle un permis, ou à tout autre moment, le directeur peut assortir le permis des conditions qu'il juge appropriées.

**Modification des conditions**

(2) Le directeur peut, à tout moment, modifier les conditions du permis.

**Avis**

(3) S'il assortit le permis de conditions ou qu'il modifie des conditions, le directeur en avise le titulaire de permis par écrit.

**Contenu de l'avis**

(4) L'avis énonce les motifs de l'imposition de conditions ou de la modification de conditions et indique que le titulaire de permis a droit à une audience devant le Tribunal s'il en demande une conformément au paragraphe 231 (1).

**Prise d'effet des conditions sur avis**

(5) L'imposition ou la modification de conditions prend effet dès que le titulaire de permis reçoit l'avis. Une demande d'audience devant le Tribunal n'a pas pour effet de surseoir à l'imposition ou à la modification des conditions.

**Titulaire du permis : obligation de conformité aux conditions**

(6) Le titulaire de permis doit se conformer aux conditions dont est assorti le permis.

**228** Le directeur peut proposer de refuser de délivrer un permis s'il est d'avis que, selon le cas :

**Ententes**

(4) Le ministre peut conclure des ententes avec des dépositaires désignés au sujet des pouvoirs et des fonctions que leur attribue le présent article. Ces ententes peuvent prévoir des versements aux dépositaires désignés.

**Divulgateur au dépositaire désigné**

221 (1) Dans les circonstances prescrites, le ministre, le registraire général de l'état civil au sens de la *Loi sur les statistiques de l'état civil*, une société, un titulaire de permis et les autres personnes prescrites donnent au dépositaire désigné visé à l'article 220 les renseignements ayant trait aux adoptions qui sont prescrites.

**Idem : ordonnances d'adoption**

(2) Dans les circonstances prescrites, le tribunal donne au dépositaire désigné une copie certifiée conforme des ordonnances d'adoption rendues sous le régime de la présente partie ainsi que les autres documents prescrites.

**Divulgateur à d'autres personnes**

**Par le ministre**

222 (1) Le ministre donne les renseignements ayant trait aux adoptions qui sont prescrites aux personnes prescrites et dans les circonstances prescrites.

**Par une société**

(2) La société donne les renseignements ayant trait aux adoptions qui sont prescrites aux personnes prescrites et dans les circonstances prescrites.

**Par un titulaire de permis**

(3) Le titulaire de permis donne les renseignements ayant trait aux adoptions qui sont prescrites aux personnes prescrites et dans les circonstances prescrites.

**Par un dépositaire**

(4) Le dépositaire désigné visé à l'article 220 donne les renseignements ayant trait aux adoptions qui sont prescrites aux personnes prescrites et dans les circonstances prescrites.

**Portée**

223 Les articles 221 et 222 s'appliquent à l'égard des renseignements ayant trait à une adoption quelle que soit la date de l'ordonnance d'adoption.

**CARACTÈRE CONFIDENTIEL DES DOSSIERS D'ADOPTION**

**Caractère confidentiel des renseignements sur les adoptions**

224 (1) Malgré toute autre loi, une fois qu'une ordonnance d'adoption est rendue, nul ne doit examiner, retrancher, modifier ni divulguer les renseignements ayant trait à l'adoption que conserve le ministre, une société, un titulaire de permis ou un dépositaire désigné visé à l'article 220, ni autoriser ces actes, sauf si, selon le cas,

a) le ministre, la société, le titulaire de permis ou le dépositaire désigné, ou leur personnel, doivent accomplir ces actes pour maintenir ou mettre à jour les renseignements;

b) la présente loi ou les règlements l'autorisent.

**Pouvoirs des tribunaux judiciaires et administratifs**

(2) Le paragraphe (1) n'a pas d'incidence sur le pouvoir que possède un tribunal judiciaire ou administratif de contraindre un témoin à témoigner ou d'ordonner la production d'un écrit.

**Champ d'application**

(3) Le présent article s'applique quelle que soit la date de l'ordonnance d'adoption.

**Vie privée**

(4) La Loi sur l'accès à l'information et la protection de la vie privée ne s'applique pas aux renseignements ayant trait à une adoption.

**INJONCTION**

**Injonction**

225 (1) Sur requête de la société ou du titulaire de permis, la Cour supérieure de justice peut accorder une injonction pour empêcher une personne de contrevenir au paragraphe 188 (2).

**Modification ou révocation de l'ordonnance**

(2) Sur requête d'une personne, la Cour peut modifier ou révoquer une ordonnance rendue en vertu du paragraphe (1).



## Parent informé

**218** À la demande d'une personne dont le consentement était exigé en application de l'alinéa 177 (2) a) ou de l'alinéa 137 (2) a) de l'ancienne loi et qui a donné ce consentement ou dont le consentement a fait l'objet d'une dispense, la société ou le titulaire de permis qui a placé l'enfant en vue de son adoption informe cette personne si une ordonnance d'adoption a été rendue à l'égard de l'enfant.

## Documents du tribunal

**219 (1)** La définition qui suit s'applique au présent article.

«tribunal» S'entend en outre de la Cour supérieure de justice.

## Obligation de sceller les documents

(2) Sous réserve des paragraphes (3) et 221 (2), les documents utilisés dans le cadre d'une requête en ordonnance d'adoption présentée sous le régime de la présente partie ou de la partie VII (Adoption) de l'ancienne loi sont scellés avec une copie certifiée conforme de l'ordonnance originale et déposés au greffe du tribunal par l'officier de justice compétent. Ils ne doivent pas être ouverts pour examen, sauf sur ordonnance du tribunal.

## Transmission de l'ordonnance

(3) Dans les 30 jours qui suivent le jour où une ordonnance d'adoption est rendue sous le régime de la présente partie, l'officier de justice compétent fait faire un nombre suffisant de copies certifiées conformes de l'ordonnance sous le sceau de celui qui les certifie. Il fournit ce qui suit :

a) l'original de l'ordonnance au parent adoptif;

b) une copie certifiée conforme au registraire général de l'état civil au sens de la *Loi sur les statistiques de l'état civil* ou, si l'enfant adopté est né hors de l'Ontario, deux copies certifiées conformes;

c) si l'enfant adopté est inscrit ou a le droit de l'être en vertu de la *Loi sur les Indiens* (Canada), une copie certifiée conforme au registraire au sens de cette loi;

d) une copie certifiée conforme aux autres personnes prescrites.

## Autres dossiers du tribunal

(4) Sauf ordonnance contraire du tribunal, seul le tribunal peut examiner les renseignements identificatoires qui proviennent des dossiers de personnes suivantes et qui figurent dans un dossier du tribunal ayant trait à la révision judiciaire d'une décision rendue ou prise par l'une d'entre elles :

1. Un dépositaire désigné visé à l'article 220.

2. La personne qui, par l'effet d'un règlement pris en vertu de la disposition 18 du paragraphe 323 (1), révisé des décisions concernant les divulgations de renseignements prévues à l'article 221 ou 222 ou entend les appels de ces décisions.

3. Une personne visée au paragraphe 221 (1) ou 222 (1).

## Idem

(5) Nul ne doit, sans l'autorisation du tribunal, divulguer les renseignements identificatoires visés au paragraphe (4) qu'il a obtenus à partir du dossier du tribunal.

## Définition

(6) La définition qui suit s'applique aux paragraphes (4) et (5).

«renseignements identificatoires» Renseignements dont la divulgation, isolément ou avec d'autres renseignements, révélera dans les circonstances l'identité de la personne à laquelle ils ont trait.

## Désignation de dépositaires de renseignements

**220 (1)** Le lieutenant-gouverneur en conseil peut, par règlement, désigner une ou plusieurs personnes pour agir à titre de dépositaires de renseignements ayant trait aux adoptions. Il peut assujettir la désignation aux conditions et restrictions qu'il juge appropriées.

## Pouvoirs et fonctions

(2) Le dépositaire désigné peut exercer les pouvoirs et doit exercer les fonctions qui sont prescrits relativement aux renseignements qui lui sont fournis en vertu de la présente loi.

## Idem : divulgation de renseignements

(3) Le dépositaire désigné peut exercer les autres pouvoirs et doit exercer les autres fonctions qui sont prescrits à une fin liée à la divulgation de renseignements ayant trait aux adoptions, y compris effectuer des recherches à la demande de personnes et dans les circonstances prescrites.

- a) l'enfant adopté devient l'enfant du parent adoptif et cette personne devient le parent de l'enfant;
- b) l'enfant adopté cesse d'être l'enfant de la personne qui était son parent avant l'ordonnance d'adoption et cette personne cesse d'être son parent, sauf si cette personne est le conjoint du parent adoptif.

#### **Liens de parenté**

(3) À toutes fins, les liens de parenté qui unissent toutes les personnes, y compris l'enfant adopté, le parent adoptif, la parenté de celui-ci, le parent avant que soit rendue l'ordonnance d'adoption et la parenté de celui-ci sont établis conformément au paragraphe (2).

#### **Mention dans un testament ou un autre document**

(4) Sauf indication contraire, si un testament ou un autre document, fait ou rédigé avant ou après le jour de l'entrée en vigueur du présent paragraphe, que son auteur soit vivant ou non à cette date, fait mention d'une personne, ou d'un groupe ou d'une catégorie de personnes décrites en fonction d'un lien par le sang ou par le mariage avec une autre personne, cette mention est réputée se rapporter à une personne qui répond à cette description par suite d'une adoption ou inclure cette personne.

#### **Champ d'application du présent article**

(5) Le présent article s'applique et est réputé s'être toujours appliqué à l'égard d'une adoption prononcée en application d'une loi qui est en vigueur, mais non de façon à porter atteinte à ce qui suit :

- a) un droit de propriété ou un droit de l'enfant adopté qui a été dévolu de façon indéfectible avant la date à laquelle a été rendue l'ordonnance d'adoption;
- b) un droit de propriété ou un droit qui a été dévolu de façon indéfectible avant le jour de l'entrée en vigueur du présent paragraphe.

#### **Exception**

(6) Pour les besoins des lois relatives à l'inceste et aux degrés de parenté qui constituent un empêchement au mariage, les paragraphes (2) et (3) n'ont pas pour effet de priver une personne d'un lien de parenté qui aurait existé en l'absence de ces paragraphes.

#### **Adoption faite dans une autre autorité législative**

215 L'adoption prononcée conformément à la loi d'une autre autorité législative, avant ou après le jour de l'entrée en vigueur du présent article, a le même effet en Ontario qu'une adoption prononcée sous le régime de la présente partie.

#### **Parent de naissance**

216 Si une ordonnance d'adoption a été rendue sous le régime de la présente partie, aucun tribunal ne doit rendre une ordonnance en vertu de la présente partie accordant le droit de visiter l'enfant aux personnes suivantes :

- a) un parent de naissance;
- b) un membre de la famille du parent de naissance.

#### **MAINTIEN DES RELATIONS**

#### **Maintien des relations**

217 (1) La société fait tous les efforts raisonnables pour aider un enfant à maintenir des relations avec des personnes qui sont bénéfiques et importantes pour lui dans les circonstances suivantes :

- 1. L'enfant a été placé en vue de son adoption par la société et celle-ci a décidé de ne pas compléter les formalités de l'adoption par la personne auprès de qui l'enfant était placé.
- 2. L'enfant est renvoyé aux soins d'une société après qu'une ordonnance d'adoption a été rendue.

#### **Ordonnance ou accord de communication ou ordonnance de visite**

(2) Pour l'application du paragraphe (1), en plus de ce qui est permis en vertu du paragraphe 102 (8), la société :

- a) facilite les contacts ou la communication prévus dans une ordonnance de communication existante ou un accord de communication existant à l'égard de l'enfant et des personnes qui font l'objet de l'ordonnance ou qui sont parties à l'accord, selon le cas;
- b) étudie la question de savoir s'il y a lieu de demander, par voie de requête, qu'une ordonnance de visite soit rendue sous le régime de la partie V (Protection de l'enfance) à l'égard de l'enfant et des personnes concernées.

#### **Maintien en vigueur des ordonnances de communication existantes**

(3) Il est entendu que, dans les circonstances visées à la disposition 1 ou 2 du paragraphe (1), une ordonnance de communication existante demeure en vigueur jusqu'à ce qu'elle soit modifiée ou révoquée.

**Résidence hors de l'Ontario**

(5) Si le requérant établit sa résidence hors de l'Ontario après avoir obtenu l'ordonnance prévue au paragraphe (1), le tribunal peut néanmoins rendre l'ordonnance d'adoption prévue au paragraphe 196 (1) ou (2) si la déclaration déposée en application du paragraphe 199 (1) indique que, de l'avis du directeur ou du directeur local, il serait dans l'intérêt véritable de l'enfant de rendre l'ordonnance.

**Ordonnances d'adoption successives**

211 L'ordonnance d'adoption prévue au paragraphe 196 (1) ou (2) ou l'ordonnance provisoire de garde prévue au paragraphe 210 (1) peuvent être rendues à l'égard d'une personne qui fait l'objet d'une ordonnance d'adoption antérieure.

APPELS

**Appels**

**Appel : ordonnance d'adoption**

212 (1) Il peut être interjeté appel devant la Cour supérieure de justice de l'ordonnance du tribunal prévue à l'article 196. Peut être fait appel :

a) le requérant qui demande qu'une ordonnance d'adoption soit rendue;

b) le directeur ou le directeur local qui a déposé la déclaration en application du paragraphe 199 (1).

**Idem : ordonnance portant sur le consentement**

(2) Il peut être interjeté appel devant la Cour supérieure de justice de l'ordonnance du tribunal prévue à l'article 178 selon laquelle il est passé outre à l'obtention du consentement. Peut être fait appel :

a) les personnes visées au paragraphe (1) du présent article;

b) la personne dont le consentement a fait l'objet d'une dispense.

**Idem : retrait tardif du consentement**

(3) Il peut être interjeté appel devant la Cour supérieure de justice de l'ordonnance du tribunal prévue au paragraphe 179 (1) autorisant le retrait tardif du consentement. Peut être fait appel :

a) les personnes visées au paragraphe (1) du présent article;

b) l'auteur du consentement.

**Aucune prorogation du délai**

(4) Aucune prorogation du délai d'appel n'est accordée.

**Lieu de l'audience**

(5) L'appel interjeté en vertu du présent article est entendu dans le comté ou le district où l'ordonnance portée en appel a été rendue.

**Huis clos**

(6) L'appel interjeté en vertu du présent article est entendu à huis clos.

EFFET DE L'ORDONNANCE D'ADOPTION

**Ordonnance définitive**

213 (1) Une ordonnance d'adoption rendue en vertu de l'article 196 est définitive et irrévocable, sous réserve seulement de l'article 212 (appels). Elle ne doit pas être contestée ni révisée par un tribunal au moyen d'une injonction, d'un jugement déclaratoire, d'un bref de *certiorari*, de *mandamus*, de prohibition ou d'*habeas corpus*, ou d'une requête en révision judiciaire.

**Validité de l'ordonnance d'adoption : ordonnance ou accord de communication**

(2) La conformité ou la non-conformité aux conditions d'une ordonnance de communication ou d'un accord de communication visant un enfant n'a pas pour effet d'invalider une ordonnance d'adoption de l'enfant rendue en vertu de l'article 196.

**Statut de l'enfant adopté**

214 (1) La définition qui suit s'applique au présent article.

«enfant adopté» S'entend d'une personne qui a été adoptée en Ontario.

**Idem**

(2) À compter de la date à laquelle est rendue une ordonnance d'adoption et à toutes les fins de la loi :



## Renvoi à l'avocat des enfants

(3) Si elle décide qu'il est souhaitable qu'un avocat représente l'enfant, la Cour peut renvoyer l'affaire à l'avocat des enfants.

## ACCORDS DE COMMUNICATION

### Parties à l'accord de communication

209 (1) Afin de faciliter la communication ou de maintenir une relation, un accord de communication peut être conclu entre, d'une part, un parent adoptif d'un enfant ou une personne auprès de qui une société ou un titulaire de permis a placé ou compte placer un enfant en vue de son adoption et, d'autre part, l'une ou l'autre des personnes suivantes :

1. Un parent de naissance, un membre de la parenté de l'enfant ou un frère ou une sœur de naissance.
2. Un parent de famille d'accueil de l'enfant ou une autre personne qui a pris soin de l'enfant ou qui en a eu la garde à un moment quelconque.
3. Un membre de la famille élargie de l'enfant ou de la communauté à laquelle il appartient et avec qui l'enfant entretient une relation importante ou des liens affectifs importants.
4. Le parent adoptif d'un frère ou d'une sœur de naissance de l'enfant ou une personne auprès de qui la société ou le titulaire de permis a placé ou compte placer un frère ou une sœur de naissance de l'enfant en vue de son adoption.
5. Dans le cas d'un enfant inuit, métis ou de Premières Nations :

- i. une personne visée à la disposition 1, 2, 3 ou 4,
- ii. un membre des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient et qui peut ne pas avoir entretenu une relation importante ou des liens affectifs importants avec l'enfant dans le passé, mais qui l'aidera à nouer ou à maintenir des liens avec la culture, le patrimoine et les traditions des communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient et à préserver son identité culturelle et les liens qui l'unissent à la communauté.

### Date de l'accord

(2) L'accord de communication peut être conclu à tout moment avant qu'une ordonnance d'adoption soit rendue ou par la suite.

### Accord prévoyant un processus de règlement des différends

(3) L'accord de communication peut prévoir un processus visant à régler les différends découlant de l'accord ou se rapportant à des questions ayant trait à l'accord.

### Opinion et désirs de l'enfant

(4) Avant que l'accord de communication soit conclu, l'opinion et les désirs de l'enfant doivent être pris en considération et il doit être tenu dûment compte de ceux-ci eu égard à l'âge et au degré de maturité de l'enfant.

## ORDONNANCES PROVISOIRES

### Ordonnance provisoire

210 (1) Après avoir étudié la déclaration déposée en application du paragraphe 199 (1), le tribunal saisi d'une requête en ordonnance d'adoption prévue au paragraphe 196 (1) ou (2) peut reporter sa décision à une date ultérieure et rendre une ordonnance provisoire dans l'intérêt véritable de l'enfant aux termes de laquelle l'enfant est placé aux soins et sous la garde du requérant pendant une période précise qui ne doit pas dépasser un an.

### Conditions

(2) Le tribunal peut assortir l'ordonnance rendue en vertu du paragraphe (1) des conditions qu'il estime appropriées en ce qui concerne :

- a) les aliments et l'éducation de l'enfant;
- b) la surveillance de l'enfant;
- c) les autres questions qu'il estime utiles dans l'intérêt véritable de l'enfant.

### Nature de l'ordonnance

(3) L'ordonnance provisoire rendue en vertu du paragraphe (1) n'est pas une ordonnance d'adoption.

### Consentement obligatoire

(4) Les articles 177 et 178 (consentement à l'adoption) s'appliquent à l'ordonnance rendue en vertu du paragraphe (1) avec les adaptations nécessaires.

(i) l'ordonnance proposée maintiendrait une relation qui est bénéfique et importante pour l'enfant,

(ii) dans le cas d'une ordonnance de communication rendue en vertu de l'article 194, l'ordonnance proposée aiderait l'enfant à nouer ou à maintenir des liens avec la culture, le patrimoine et les traditions des bandes et communautés autochtones, métisses ou de Premières Nations auxquelles il appartient et à préserver son identité culturelle et les liens qui l'unissent à la communauté.

#### **Ordonnance visant à révoquer l'ordonnance de communication**

(7) Le tribunal ne doit pas révoquer une ordonnance de communication en vertu du présent article, sauf s'il est convaincu de ce qui suit :

- a) un changement important de circonstances est survenu;
- b) la révocation est dans l'intérêt véritable de l'enfant;
- c) dans le cas d'une ordonnance de communication rendue en vertu de l'article 191 ou 193, la relation faisant l'objet de l'ordonnance n'est plus bénéfique et importante pour l'enfant.

#### **Consentement obligatoire de la société**

(8) Le tribunal ne doit pas, en vertu du présent article, ordonner à une société de superviser l'arrangement prévu par une ordonnance de communication ou d'y participer sans le consentement de la société.

#### **Règlement extrajudiciaire des différends**

(9) À n'importe quelle étape d'une instance introduite sous le régime du présent article, le tribunal peut, dans l'intérêt véritable de l'enfant et avec le consentement des parties, ajourner l'instance en vue de permettre aux parties de tenter de régler, au moyen d'une méthode prescrite de règlement extrajudiciaire des différends, tout différend qui les oppose à l'égard d'une question qui se rapporte à l'instance.

#### **Appel de l'ordonnance visant à modifier ou à révoquer l'ordonnance de communication**

**205 (1)** Peut interjeter appel devant la Cour supérieure de justice d'une ordonnance du tribunal rendue en vertu de l'article 195 ou 204 :

- a) toute personne qui avait le droit de demander, par voie de requête, l'ordonnance visant à modifier ou à révoquer l'ordonnance de communication;
- b) toute personne qui avait le droit de recevoir un avis de la requête en modification ou en révocation de l'ordonnance de communication.

#### **Ordonnance provisoire**

(2) En attendant le règlement définitif de l'appel, la Cour supérieure de justice peut, à la suite d'une motion présentée par une partie, rendre une ordonnance provisoire dans l'intérêt véritable de l'enfant qui modifie ou suspend l'ordonnance de communication.

#### **Aucune prorogation du délai**

(3) Aucune prorogation du délai d'appel n'est accordée.

#### **Preuve supplémentaire**

(4) La Cour peut recevoir des éléments de preuve supplémentaires qui se rapportent à des événements postérieurs à la décision portée en appel.

#### **Lieu de l'audience**

(5) L'appel interjeté en vertu du présent article est entendu dans le comté ou le district où l'ordonnance portée en appel a été rendue.

#### **Application de l'article 201**

**206** Les paragraphes 201 (1) et (2) s'appliquent, avec les adaptations nécessaires, aux instances introduites en vertu des articles 191, 193, 194, 195, 204 et 205.

#### **Participation possible de l'enfant**

**207** Un enfant a le droit de participer à l'instance introduite en vertu de l'article 191, 193, 194, 195, 204 ou 205 comme s'il y était partie.

#### **Représentation par un avocat**

**208 (1)** L'enfant peut être représenté par un avocat à n'importe quelle étape d'une instance introduite en vertu de l'article 191, 193, 194, 195, 204 ou 205, et le paragraphe 77 (2) s'applique, avec les adaptations nécessaires, à une telle instance.

#### **Avocat des enfants**

(2) L'avocat des enfants peut représenter un enfant en vertu de la présente partie s'il est d'avis que cela est approprié.

- b) prend en considération l'opinion et les désirs de l'enfant et tient dûment compte de ceux-ci eu égard à son âge et à son degré de maturité;
- c) entend l'enfant, si les circonstances s'y prêtent.

#### **Participation d'un adulte**

- (4) Si une requête en ordonnance d'adoption d'une personne prévue au paragraphe 196 (3) est présentée, le tribunal doit étudier l'opinion et les désirs de la personne et il l'entend, sur demande.

#### **Changement de nom**

- 203 (1) Si le tribunal rend une ordonnance en vertu de l'article 196, il peut, à la demande du ou des requérants et, si l'adopté a 12 ans ou plus, avec le consentement écrit de ce dernier :

- a) changer le nom de famille de l'adopté et lui donner celui que l'adopté aurait pu avoir s'il avait été l'enfant du ou des requérants à sa naissance;
- b) changer le prénom de l'adopté.

#### **Consentement de l'enfant non exigé**

- (2) Le consentement de l'enfant au changement de nom prévu au paragraphe (1) n'est pas exigé s'il a été passé outre à l'obtention de son consentement en vertu du paragraphe 177 (9).

#### **Modification ou révocation d'une ordonnance de communication après l'adoption**

- 204 (1) L'une ou l'autre des personnes suivantes peut, après qu'une ordonnance d'adoption a été rendue en vertu de l'article 196, présenter au tribunal une requête en modification ou en révocation d'une ordonnance de communication rendue en vertu de l'article 191, 193 ou 194 :

- 1. Un parent adoptif.
- 2. L'enfant adopté.
- 3. La personne qui est autorisée à communiquer ou à entretenir une relation avec l'enfant en vertu de l'ordonnance de communication.
- 4. La société qui supervise l'arrangement prévu par l'ordonnance de communication faisant l'objet de la requête ou qui y participe.

#### **Autorisation du tribunal**

- (2) Malgré les dispositions 2 et 3 du paragraphe (1), l'enfant et la personne qui est autorisée à communiquer ou à entretenir une relation avec l'enfant en vertu d'une ordonnance de communication ne doivent pas présenter la requête prévue au paragraphe (1) sans l'autorisation du tribunal.

#### **Compétence territoriale**

- (3) La requête prévue au paragraphe (1) est présentée dans le comté ou le district :

- a) où réside l'enfant, s'il réside en Ontario;
- b) où a été rendue l'ordonnance d'adoption de l'enfant, s'il ne réside pas en Ontario, à moins que le tribunal ne soit convaincu qu'il serait plus pratique de trancher la question dans un autre comté ou district.

#### **Avis**

- (4) La personne qui présente la requête prévue au paragraphe (1) en donne avis à chaque personne qui aurait pu présenter une requête en vertu de ce paragraphe relativement à l'ordonnance.

#### **Mode de remise de l'avis à un enfant**

- (5) L'avis remis à un enfant en application du paragraphe (4) est donné en en remettant une copie :

- a) à l'avocat des enfants;
- b) à l'avocat de l'enfant, s'il y a lieu;
- c) à l'enfant, s'il a 12 ans ou plus.

#### **Ordonnance visant à modifier l'ordonnance de communication**

- (6) Le tribunal ne doit pas rendre une ordonnance en vertu du présent article visant à modifier l'ordonnance de communication, sauf s'il est convaincu de ce qui suit :

- a) un changement important de circonstances est survenu;
- b) l'ordonnance proposée est dans l'intérêt véritable de l'enfant;
- c) selon le cas :



## Adoption par la famille

(7) Si une requête en ordonnance d'adoption d'un enfant est présentée en vertu du paragraphe 196 (2) :

- a) les paragraphes (1), (2), (4), (5) et (6) s'appliquent à la requête, si l'enfant ne résidait pas au Canada avant d'être placé en vue de son adoption;
- b) le tribunal peut ordonner que les paragraphes (1), (2), (4), (5) et (6) s'appliquent à la requête, si l'enfant résidait au Canada avant d'être placé en vue de son adoption.

## Lieu de l'audience

200 (1) La requête en ordonnance d'adoption est entendue et traitée dans le comté ou le district dans lequel réside, lors du dépôt de la requête :

- a) soit le requérant;
- b) soit la personne qui doit être adoptée.

## Renvoi

(2) Si le tribunal est convaincu à une étape quelconque d'une requête en ordonnance d'adoption qu'il serait plus pratique d'instruire l'instance dans un autre comté ou district, il peut ordonner le renvoi de l'instance dans ce comté ou district et sa poursuite comme si elle y avait été introduite.

## Règles : requêtes

### Huis clos

201 (1) La requête en ordonnance d'adoption est entendue et traitée à huis clos.

### Caractère confidentiel des dossiers

(2) Nul ne doit avoir accès aux dossiers du tribunal concernant la requête en ordonnance d'adoption, sauf :

- a) le tribunal et ses employés autorisés;
- b) les parties et les personnes qui les représentent en vertu de la *Loi sur le Barreau*;
- c) le directeur et le directeur local.

### Requête non entendue

(3) Si la requête en ordonnance d'adoption n'est pas entendue dans les 12 mois de sa signature par le requérant :

- a) le tribunal ne doit pas l'entendre, sauf s'il est convaincu qu'il est juste de le faire;
- b) le requérant peut en présenter une autre.

### Aucun droit à l'avis

(4) N'a pas le droit de recevoir l'avis de la requête prévue à l'article 196 quiconque, selon le cas :

- a) a donné le consentement prévu à l'alinéa 177 (2) a) et ne l'a pas retiré;
- b) a bénéficié de la dispense en matière de consentement prévue à l'article 178;
- c) est un parent d'un enfant confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) et placé en vue de son adoption.

### Pouvoir du tribunal

202 (1) Le tribunal peut, de sa propre initiative, assigner une personne à comparaitre devant lui, à témoigner et à produire un document ou une chose. Il peut faire exécuter l'assignation comme si elle avait été délivrée dans le cadre d'une instance introduite sous le régime de la *Loi sur le droit de la famille*.

### Obligation du tribunal

(2) Le tribunal ne doit rendre l'ordonnance d'adoption prévue au paragraphe 196 (1) ou (2) que s'il est convaincu que :

- a) chaque personne qui a donné le consentement prévu à l'article 177 comprend la nature et les effets de l'ordonnance d'adoption;
- b) chaque requérant comprend bien le rôle particulier d'un parent adoptif.

### Participation de l'enfant

(3) Si une requête en ordonnance d'adoption prévue au paragraphe 196 (1) ou (2) est présentée, le tribunal :

- a) examine si l'enfant a la capacité juridique de comprendre et de saisir la nature de la requête;

b) d'un enfant de 16 ans ou plus qui s'est soustrait à l'autorité parentale.

#### **Personnes pouvant présenter une requête**

(4) Seules les personnes suivantes peuvent présenter une requête en vertu du présent article :

a) une personne qui agit seule;

b) deux personnes dont l'une est le conjoint de l'autre, qui agissent conjointement.

#### **Condition : résidence**

(5) Le tribunal ne doit pas rendre une ordonnance en vertu du présent article portant sur l'adoption d'une personne qui ne réside pas en Ontario ou à la requête d'une telle personne.

#### **Requérant mineur**

197 Le tribunal ne doit pas rendre une ordonnance en vertu de l'article 196 à la requête d'une personne de moins de 18 ans, à moins qu'il ne soit convaincu que des circonstances particulières justifient l'ordonnance.

#### **Cas où l'ordonnance ne doit pas être rendue**

198 Si le tribunal a rendu une ordonnance :

a) soit au moyen de laquelle il permet, conformément à l'article 178, de passer outre à l'obtention d'un consentement;

b) soit au moyen de laquelle il refuse la possibilité de retrait tardif d'un consentement prévu au paragraphe 179 (1).

il ne doit pas rendre l'ordonnance prévue à l'article 196 avant le dernier en date des événements suivants :

c) l'expiration du délai fixé pour interjeter appel de l'ordonnance;

d) le règlement définitif de l'appel ou le désistement d'une partie.

#### **Déclaration du directeur**

199 (1) Si une requête en ordonnance d'adoption d'un enfant prévue au paragraphe 196 (1) est présentée, le directeur doit, avant l'audience, déposer auprès du tribunal une déclaration écrite dans laquelle il indique que, selon le cas :

a) l'enfant a demeuré auprès du requérant pendant au moins six mois ou, dans le cas de la requête prévue à l'alinéa 196

(1) b), pendant au moins deux ans, et, qu'à son avis, il serait dans l'intérêt véritable de l'enfant de rendre l'ordonnance;

b) dans le cas de la requête prévue à l'alinéa 196 (1) a), il est d'avis, pour des motifs précis, qu'il serait dans l'intérêt véritable de l'enfant de rendre l'ordonnance même si l'enfant a demeuré moins de six mois auprès du requérant;

c) l'enfant a demeuré auprès du requérant pendant au moins six mois, ou, dans le cas de la requête prévue à l'alinéa 196

(1) b), pendant au moins deux ans, mais, qu'à son avis, il ne serait pas dans l'intérêt véritable de l'enfant de rendre l'ordonnance.

#### **Circonstances supplémentaires**

(2) La déclaration écrite doit mentionner les circonstances supplémentaires, s'il y a lieu, sur lesquelles le directeur veut attirer l'attention du tribunal.

#### **Déclaration du directeur local**

(3) Si l'enfant a été placé par une société et a demeuré auprès du requérant pendant au moins six mois, le directeur local peut faire et déposer la déclaration écrite.

#### **Modification de la déclaration et autres pouvoirs**

(4) Le directeur ou le directeur local, selon le cas, peut modifier la déclaration écrite à tout moment, participer à l'audience et faire des observations.

#### **Recommandation négative**

(5) Si la déclaration écrite indique que le directeur ou le directeur local est d'avis qu'il ne serait pas dans l'intérêt véritable de l'enfant de rendre l'ordonnance prévue, une copie de la déclaration est déposée auprès du tribunal et est signifiée au requérant au moins 30 jours avant l'audience.

#### **Rapport : adaptation de l'enfant**

(6) La déclaration écrite doit se fonder sur un rapport indiquant la manière dont l'enfant s'adapte au foyer du requérant. Ce rapport doit être établi :

a) soit par la société qui a placé l'enfant ou qui a compétence dans le territoire où l'enfant est placé;

b) soit par la personne qu'agréé le directeur ou le directeur local.

## Ordonnance visant à modifier l'ordonnance de communication avant l'adoption

(5) Le tribunal ne doit pas rendre l'ordonnance prévue au présent article visant à modifier une ordonnance de communication, sauf s'il est convaincu de ce qui suit :

a) un changement important de circonstances est survenu;

b) l'ordonnance proposée est dans l'intérêt véritable de l'enfant;

c) selon le cas :

(i) l'ordonnance proposée maintiendrait une relation qui est bénéfique et importante pour l'enfant;

(ii) dans le cas d'une ordonnance de communication rendue en vertu de l'article 194, l'ordonnance proposée aiderait l'enfant à nouer ou à maintenir des liens avec la culture, le patrimoine et les traditions des communautés indigènes, métisses ou de Premières Nations auxquelles il appartient et à préserver son identité culturelle et les liens qui l'unissent à la communauté.

## Ordonnance révoquant l'ordonnance de communication avant l'adoption

(6) Le tribunal ne doit pas révoquer une ordonnance de communication en vertu du présent article, sauf s'il est convaincu de ce qui suit :

a) un changement important de circonstances est survenu;

b) la révocation est dans l'intérêt véritable de l'enfant;

c) dans le cas d'une ordonnance de communication rendue en vertu de l'article 191 ou 193, la relation faisant l'objet de l'ordonnance n'est plus bénéfique et importante pour l'enfant.

## Consentement obligatoire de la société

(7) Le tribunal ne doit pas, en vertu du présent article, ordonner à une société de superviser l'arrangement prévu par une ordonnance de communication ou d'y participer sans le consentement de la société.

## Règlement extrajudiciaire des différends

(8) À n'importe quelle étape d'une instance introduite sous le régime du présent article, le tribunal peut, dans l'intérêt véritable de l'enfant et avec le consentement des parties, ajourner l'instance en vue de permettre aux parties de tenter de régler, au moyen d'une méthode prescrite de règlement extrajudiciaire des différends, tout différend qui les oppose à l'égard d'une question qui se rapporte à l'instance.

## Ordonnances provisoires

(9) Le tribunal peut rendre, en vertu du présent article, les ordonnances provisoires en matière de communication qu'il estime être dans l'intérêt véritable de l'enfant.

## ORDONNANCES D'ADOPTION

## Ordonnances d'adoption

### Adoption d'un enfant

196 (1) À la requête de la personne auprès de qui un enfant est placé et dans l'intérêt véritable de cet enfant, le tribunal peut rendre une ordonnance portant sur l'adoption d'un enfant de moins de 16 ans, ou de 16 ans ou plus mais qui ne s'est pas soustrait à l'autorité parentale, et qui :

a) soit a été placé, en vue de son adoption, par une société ou un titulaire de permis;

b) soit a été placé, en vue de son adoption, par une personne autre qu'une société ou un titulaire de permis et qui a demeuré chez le requérant pendant au moins deux ans.

## Adoption par la famille

(2) Le tribunal peut, dans l'intérêt véritable d'un enfant, rendre une ordonnance d'adoption à la suite de la requête de l'une ou l'autre des personnes suivantes :

a) un membre de la parenté de l'enfant;

b) un parent de l'enfant;

c) le conjoint d'un parent de l'enfant.

## Adoption d'un adulte ou d'un enfant soustrait à l'autorité parentale

(3) À la requête d'une tierce personne, le tribunal peut rendre une ordonnance portant sur l'adoption :

a) d'une personne de 18 ans ou plus;



**Requête en ordonnance de communication**  
(5) La personne visée à la disposition 1 ou 2 du paragraphe (2) peut, dans les 30 jours suivant la réception de l'avis, présenter au tribunal une requête en ordonnance de communication.

**Idem : société**

(6) La société peut, dans les 30 jours suivant la remise de l'avis, présenter au tribunal une requête en ordonnance de communication.

**Avis de requête**

(7) La personne ou la société qui présente une requête en ordonnance de communication en vertu du présent article en donne avis à toute autre personne ou société qui aurait pu la présenter.

**Mode de remise de l'avis à un enfant**

(8) L'avis remis à l'enfant en application du paragraphe (7) est donné en en remettant une copie :

a) à l'avocat des enfants;

b) à l'avocat de l'enfant, s'il y a lieu;

c) à l'enfant, s'il a 12 ans ou plus.

**Ordonnance de communication**

(9) Le tribunal peut rendre une ordonnance de communication en vertu du présent article à l'égard d'un enfant s'il est convaincu de ce qui suit :

a) l'ordonnance est dans l'intérêt véritable de l'enfant;

b) l'ordonnance aidera l'enfant à nouer ou à maintenir des liens avec la culture, le patrimoine et les traditions de la communauté d'origine, mettra en évidence les liens avec la culture, le patrimoine et les traditions de la communauté d'origine, mettra en évidence les liens avec la culture, le patrimoine et les traditions de la communauté d'origine;

c) l'enfant a donné son consentement à l'ordonnance, s'il a 12 ans ou plus.

**Application d'autres dispositions**

(10) Les paragraphes 193 (4) à (6) et (8) à (11) s'appliquent, avec les adaptations nécessaires, dans le cadre du présent article.

**Requête en modification ou en révocation de l'ordonnance de communication avant l'adoption**

195 (1) La société ou la personne auprès de qui l'enfant a été placé en vue de son adoption peut, par voie de requête, demander au tribunal de rendre une ordonnance visant à modifier ou à révoquer une ordonnance de communication rendue en vertu de l'article 191, 193 ou 194.

**Présentation de la requête**

(2) La requête prévue au présent article ne doit pas être présentée après qu'une ordonnance d'adoption de l'enfant est rendue en vertu de l'article 196.

**Avis de requête**

(3) La société ou la personne qui présente une requête en vertu du présent article en donne avis aux personnes et entités suivantes :

a) l'enfant;

b) chaque personne qui est autorisée à communiquer ou à entretenir une relation avec l'enfant en application de l'ordonnance de communication;

c) toute personne auprès de qui la société a placé ou compte placer l'enfant en vue de son adoption, si la requête est présentée par la société;

d) toute société qui supervise l'arrangement prévu par l'ordonnance de communication ou qui y participe.

**Mode de remise de l'avis à un enfant**

(4) L'avis remis à l'enfant en application du paragraphe (3) est donné en en remettant une copie :

a) à l'avocat des enfants;

b) à l'avocat de l'enfant, s'il y a lieu;

c) à l'enfant, s'il a 12 ans ou plus.

## Ordonnance de communication

(7) Le tribunal peut rendre une ordonnance de communication en vertu du présent article à l'égard d'un enfant s'il est convaincu de ce qui suit :

- a) l'ordonnance est dans l'intérêt véritable de l'enfant;
- b) l'ordonnance permettra à l'enfant de maintenir avec une personne une relation bénéfique et importante pour lui;
- c) l'enfant a donné son consentement à l'ordonnance, s'il a 12 ans ou plus.

## Idem

(8) Lorsqu'il décide de rendre ou non une ordonnance de communication en vertu du présent article, le tribunal tient compte de la capacité de la personne auprès de qui la société a placé ou compte placer l'enfant en vue de son adoption ou, après que l'ordonnance d'adoption est rendue, du parent adoptif, de respecter l'arrangement prévu par l'ordonnance de communication.

## Consentement obligatoire de la société

(9) Le tribunal ne doit pas, en vertu du présent article, ordonner à une société de superviser l'arrangement prévu par une ordonnance de communication ou de participer à un tel arrangement sans le consentement de la société.

## Révocation de l'ordonnance de communication en cas de révocation de l'ordonnance confiant un enfant aux soins d'une société de façon prolongée

(10) L'ordonnance de communication rendue en vertu du présent article à l'égard d'un enfant est révoquée si l'ordonnance confiant l'enfant aux soins d'une société de façon prolongée rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) est révoquée par l'effet d'une ordonnance rendue en vertu du paragraphe 113 (1).

## Ordonnances provisoires

(11) Le tribunal peut rendre, en vertu du présent article, les ordonnances provisoires en matière de communication qu'il estime être dans l'intérêt véritable de l'enfant.

## Ordonnance de communication : bande et communauté inuite, métisse ou de Premières Nations

194 (1) Le présent article s'applique si une société a l'intention de placer un enfant inuit, métis ou de Premières Nations confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) en vue de son adoption.

## Avis

(2) Dans les circonstances mentionnées au paragraphe (1), la société donne un avis aux personnes suivantes :

- 1. Un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.
- 2. L'enfant.

## Contenu de l'avis

(3) La société précise ce qui suit dans l'avis :

- 1. Le fait qu'elle a l'intention de placer l'enfant en vue de son adoption.
- 2. Le fait que le particulier a le droit de demander, par voie de requête, une ordonnance de communication dans les 30 jours suivant la réception de l'avis.
- 3. Le fait qu'elle a le droit de demander, par voie de requête, une ordonnance de communication dans les 30 jours suivant la remise de l'avis.

## Mode de remise de l'avis

(4) Si un avis est exigé en application du paragraphe (2) :

- a) il est donné :

- (i) si la personne n'est pas un enfant, en en remettant une copie à la personne ou à un avocat qui accuse réception de l'avis par écrit sur la copie,
- (ii) si la personne est un enfant, en en remettant une copie :

- (A) à l'avocat des enfants,
- (B) à l'avocat de l'enfant, s'il y a lieu,
- (C) à l'enfant, s'il a 12 ans ou plus;

b) les paragraphes 192 (5) et (6) s'appliquent avec les adaptations nécessaires.

## Autre mode

(5) Sur requête sans préavis de la société, le tribunal peut ordonner que l'avis prévu au paragraphe (2) soit donné selon l'autre mode qu'il choisit si la société remplit les conditions suivantes :

a) elle fournit des preuves détaillées de ce qui suit :

(i) les démarches faites pour trouver le destinataire de l'avis,

(ii) si le destinataire a été trouvé, les démarches faites pour lui donner l'avis;

b) elle démontre que l'autre mode pourrait, selon toutes attentes raisonnables, porter l'avis à la connaissance de la personne.

## Avis non exigé

(6) Sur requête sans préavis de la société, le tribunal peut ordonner que la société ne soit pas tenue de donner l'avis prévu au paragraphe (2) si les conditions suivantes sont réunies :

a) des efforts raisonnables pour trouver le destinataire de l'avis n'ont pas donné ou ne donneraient pas de résultats;

b) aucun mode de remise de l'avis ne pourrait, selon toutes attentes raisonnables, porter celui-ci à la connaissance de la personne.

## Ordonnance de visite en vigueur

### Requête en ordonnance de communication

193 (1) Une personne visée à la disposition 1 du paragraphe 192 (2) peut, dans les 30 jours suivant la réception de l'avis, présenter au tribunal une requête en ordonnance de communication.

### Avis de requête

(2) La personne qui présente une requête en ordonnance de communication en vertu du présent article en donne avis aux personnes et entités suivantes :

a) la société à laquelle les soins et la garde de l'enfant sont confiés;

b) si une personne autre que l'enfant présente la requête, l'enfant;

c) si l'enfant présente la requête, la personne qui sera autorisée à communiquer ou à entretenir une relation avec lui si l'ordonnance est rendue.

### Mode de remise de l'avis à un enfant

(3) L'avis remis à l'enfant en application du paragraphe (2) est donné en en remettant une copie :

a) à l'avocat des enfants;

b) à l'avocat de l'enfant, s'il y a lieu;

c) à l'enfant, s'il a 12 ans ou plus.

### Restriction : placement

(4) La société ne doit pas placer l'enfant en vue de son adoption tant que n'a pas expiré le délai fixé pour présenter la requête en ordonnance de communication prévu au paragraphe (1), sauf si chaque personne ayant le droit de le faire a présenté une telle requête en vertu du présent article.

### Renseignements avant le placement

(5) Si une requête en ordonnance de communication a été présentée en vertu du présent article, la société doit, avant le placement de l'enfant en vue de son adoption, informer la personne auprès de qui elle compte placer l'enfant de ce qui suit :

1. Le fait qu'une telle requête a été présentée.

2. La relation entre le requérant et l'enfant ou, si l'enfant est le requérant, la relation entre l'enfant et la personne avec laquelle il sera autorisé à communiquer ou à entretenir une relation si l'ordonnance est rendue.

3. Les détails de l'arrangement en matière de communication demandé.

### Issue de la requête

(6) Si une requête en ordonnance de communication a été présentée en vertu du présent article, la société communique l'issue de la requête à la personne auprès de qui elle a placé ou compte placer l'enfant en vue de son adoption ou, après qu'une ordonnance d'adoption est rendue, au parent adoptif.



- a) l'ordonnance est dans l'intérêt véritable de l'enfant;
- b) l'ordonnance permettra à l'enfant de maintenir avec une personne une relation bénéfique et importante pour lui;
- c) les entités et personnes suivantes ont consenti à ce que l'ordonnance soit rendue :

(i) la société,

(ii) la personne qui sera autorisée à communiquer ou à entretenir une relation avec l'enfant si l'ordonnance est rendue,

(iii) la personne auprès de qui la société a placé ou compte placer l'enfant en vue de son adoption,

(iv) l'enfant, s'il a 12 ans ou plus.

### Révocation de l'ordonnance de communication en cas de révocation de l'ordonnance confiant un enfant aux soins d'une société de façon prolongée

(5) L'ordonnance de communication rendue en vertu du présent article à l'égard d'un enfant est révoquée si l'enfant cesse d'être confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) par l'effet d'une ordonnance rendue en vertu du paragraphe 113 (1).

### Ordonnance de visite en vigueur

#### Avis d'intention de placer un enfant en vue de son adoption

192 (1) Le présent article s'applique si les conditions suivantes sont réunies :

- a) la société a l'intention de placer un enfant confié à ses soins de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) en vue de son adoption;
- b) une ordonnance rendue sous le régime de la partie V (Protection de l'enfance) et portant sur le droit de visite d'une personne à l'enfant, ou réciproquement, est en vigueur.

#### Avis

(2) Dans les circonstances mentionnées au paragraphe (1), la société donne un avis aux personnes suivantes :

1. Chaque personne qui a obtenu le droit de visite prévu par l'ordonnance de visite.

2. Chaque personne à l'égard de laquelle le droit de visite a été accordé en vertu de l'ordonnance de visite.

#### Contenu de l'avis

(3) La société précise ce qui suit dans l'avis :

1. Le fait qu'elle a l'intention de placer l'enfant en vue de son adoption.
2. Le fait que l'ordonnance de visite est révoquée dès le placement de l'enfant en vue de son adoption.
3. Dans le cas d'un avis à une personne visée à la disposition 1 du paragraphe (2), le fait que cette personne a le droit de demander, par voie de requête, une ordonnance de communication dans les 30 jours suivant la réception de l'avis.
4. Dans le cas d'un avis à une personne visée à la disposition 2 du paragraphe (2), le fait que la personne visée à la disposition 1 du paragraphe (2) a le droit de demander, par voie de requête, une ordonnance de communication dans les 30 jours suivant la réception de l'avis.

#### Mode de remise de l'avis

(4) L'avis peut être donné :

- a) si la personne n'est pas un enfant, en en remettant une copie :
- (i) à la personne elle-même,
  - (ii) si la personne semble être mentalement incapable à l'égard d'une question visée dans l'avis, à la personne elle-même ainsi qu'à son tuteur aux biens ou, si elle n'en a pas, au tuteur et curateur public,
  - (iii) à un avocat qui accuse réception de l'avis par écrit sur la copie;
- b) si la personne est un enfant, en en remettant une copie :
- (i) à l'avocat des enfants,
  - (ii) à l'avocat de l'enfant, s'il y a lieu,
  - (iii) à l'enfant, s'il a 12 ans ou plus.

b) dans le cas où une demande de révision de la décision a été présentée en vertu du paragraphe (3), la Commission a confirmé la décision.

### Cas où l'enfant risque de subir des maux

(14) Une société ou un titulaire de permis peut donner suite à une décision de retirer un enfant des soins d'une personne auprès de qui il a été placé en vue de son adoption avant l'expiration du délai imparti pour demander la révision d'une décision en vertu du paragraphe (3) ou après la présentation de la demande de révision si, de l'avis du directeur ou du directeur local, l'enfant risque vraisemblablement de subir des maux pendant le laps de temps nécessaire à la révision de la décision par la Commission.

### Avis au directeur

190 (1) Si un enfant a été placé en vue de son adoption sous le régime de la présente partie, qu'aucune ordonnance d'adoption n'a été rendue et que, selon le cas :

- a) la personne auprès de qui l'enfant est placé demande à la société ou au titulaire de permis de retirer l'enfant;
- b) la société ou le titulaire de permis a l'intention de retirer l'enfant à cette personne,

la société ou le titulaire de permis en avise le directeur.

### Idem

(2) Si aucune ordonnance d'adoption de l'enfant n'a été rendue et qu'une année s'est écoulée depuis :

- a) soit le placement de l'enfant en vue de son adoption ou le plus récent consentement prévu à l'alinéa 177 (2) a), selon le premier de ces événements;
- b) soit le plus récent examen prévu au paragraphe (3) du présent article,

selon le dernier de ces événements à se réaliser, la société ou le titulaire de permis en avise le directeur, sauf si l'enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c).

### Examen par le directeur

(3) Le directeur qui reçoit l'avis prévu au paragraphe (1) ou (2) effectue un examen conformément aux règlements.

### ORDONNANCES DE COMMUNICATION

#### Aucune ordonnance de visite en vigueur

#### Requête en ordonnance de communication

191 (1) Si un enfant confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) fait également l'objet d'un plan d'adoption et qu'aucune ordonnance de visite rendue sous le régime de la partie V (Protection de l'enfance) n'est en vigueur, la société à laquelle les soins et la garde de l'enfant sont confiés peut, avant qu'une ordonnance d'adoption de l'enfant soit rendue en vertu de l'article 196, présenter une requête au tribunal en vue d'obtenir une ordonnance de communication à l'égard de l'enfant.

#### Avis de requête

(2) La société qui présente la requête prévue au présent article en donne avis aux personnes et entités suivantes :

- a) l'enfant;
- b) chaque personne qui sera autorisée à communiquer ou à entretenir une relation avec l'enfant si l'ordonnance est rendue;
- c) toute personne auprès de qui la société a placé ou compte placer l'enfant en vue de son adoption;
- d) toute société qui supervisera l'arrangement prévu par l'ordonnance de communication ou qui y participera.

#### Mode de remise de l'avis à un enfant

(3) L'avis remis à l'enfant en application du paragraphe (2) est donné en en remettant une copie :

- a) à l'avocat des enfants;
- b) à l'avocat de l'enfant, s'il y a lieu;
- c) à l'enfant, s'il a 12 ans ou plus.

#### Ordonnance de communication

(4) Le tribunal peut rendre une ordonnance de communication à l'égard d'un enfant en vertu du présent article s'il est convaincu de ce qui suit :

## Demande de révision

(3) Sous réserve du paragraphe (4), la personne qui reçoit l'avis d'une décision prévu au paragraphe (2) peut, dans les 10 jours suivant la réception de l'avis et conformément aux règlements, demander à la Commission de réviser la décision.

## Aucune révision

(4) Si une société reçoit une demande d'adoption à l'égard d'un enfant qui, au moment de la demande, avait été placé auprès d'une autre personne en vue de son adoption, l'auteur de la demande n'a pas le droit de demander la révision de la décision de la société de refuser la demande.

## Audience de la Commission

(5) Sur réception d'une demande de révision d'une décision présentée en vertu du paragraphe (3), la Commission tient une audience en application du présent article.

## Enfant inuit, métis ou de Premières Nations

(6) Sur réception d'une demande de révision d'une décision concernant un enfant inuit, métis ou de Premières Nations, la Commission donne un avis de la date de l'audience à un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

## Règles de pratique et de procédure

(7) La Loi sur l'exercice des compétences légales s'applique à l'audience prévue au présent article. La Commission se conforme aux règles de pratique et de procédure supplémentaires prescrites.

## Composition de la Commission

(8) Lors de l'audience prévue au paragraphe (5), la Commission se compose de membres qui possèdent l'expérience prescrite et les qualités requises prescrites.

## Parties

(9) Les personnes suivantes sont parties à l'audience prévue au présent article :

1. L'auteur de la demande.
2. La société ou le titulaire de permis.
3. Dans le cas d'un enfant inuit, métis ou de Premières Nations, les personnes visées aux dispositions 1 et 2 et un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.
4. Toute personne que la Commission joint comme partie en vertu du paragraphe (10).

## Fonction de parties

(10) La Commission peut joindre une personne comme partie à la révision si, à son avis, cela est nécessaire afin de trancher toutes les questions sur lesquelles porte la révision.

## Décision de la Commission

(11) En fonction de la décision qu'elle a prise relativement à la mesure adaptée à l'intérêt véritable de l'enfant, la Commission confirme ou annule la décision faisant l'objet de la révision et donne les motifs de sa décision par écrit.

## Placement subséquent

(12) Après qu'une société ou qu'un titulaire de permis a pris une décision visée au paragraphe (1) concernant un enfant, la société ne doit pas placer l'enfant en vue de son adoption auprès d'une personne qui n'est pas celle qui a le droit de demander la révision d'une décision en vertu du paragraphe (3), sauf si :

- a) le délai imparti pour demander la révision de la décision en vertu du paragraphe (3) a expiré et aucune demande n'a été présentée;

- b) dans le cas où une demande de révision de la décision a été présentée en vertu du paragraphe (3), la Commission a confirmé la décision.

## Aucun retrait avant la décision de la Commission

(13) Sous réserve du paragraphe (14), si une société ou un titulaire de permis a décidé de retirer un enfant des soins d'une personne auprès de qui il a été placé en vue de son adoption, la société ou le titulaire de permis, selon le cas, ne doit pas donner suite à sa proposition de retrait de l'enfant, sauf si :

- a) le délai imparti pour demander la révision de la décision en vertu du paragraphe (3) a expiré et aucune demande n'a été présentée;



## Examen par le directeur

(2) Le directeur examine promptement le placement projeté et, selon le cas :

- a) l'approuve sans condition;
- b) l'approuve sous réserve des conditions qu'il juge appropriées, notamment la surveillance du placement par une société;
- c) refuse de l'approuver.

## Avis

(3) Le directeur donne promptement un avis de l'approbation, avec ou sans conditions, ou du refus, selon le cas :

- a) d'une part, à la personne auprès de qui le placement est projeté;
- b) d'autre part, au titulaire de permis.

## Droit à une audience

(4) Lorsque le directeur donne un avis de sa décision de refuser le placement ou de l'approuver sous conditions, la personne auprès de qui l'enfant serait placé et le titulaire de permis ont droit à une audience devant la Commission.

## Application d'autres dispositions

(5) Les dispositions suivantes s'appliquent à l'audience :

1. Les articles 230 (audiences), 231 (révision des conditions), 263 (parties) et 264 (appel), avec les adaptations nécessaires, et, à cette fin, les mentions du Tribunal valent mention de la Commission.
2. Les paragraphes 185 (7) (prorogation du délai) et (8) (consignation des témoignages).

## Révocation de l'ordonnance de visite

188 (1) Lorsqu'une société ou un titulaire de permis place un enfant en vue de son adoption, toutes les ordonnances portant sur le droit de visite sont révoquées, y compris celles qui sont rendues sous le régime de la partie V (Protection de l'enfance) à l'égard d'un enfant confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c).

## Interdiction de s'ingérer dans le placement

(2) Si un enfant a été placé en vue de son adoption par une société ou un titulaire de permis et qu'aucune ordonnance d'adoption n'a été rendue, nul ne doit :

- a) s'ingérer dans la vie de l'enfant;
- b) rendre visite à l'enfant ou à la personne auprès de qui il a été placé, ni communiquer avec l'enfant ou cette personne dans le but de s'ingérer dans la vie de l'enfant.

## DÉCISION DE REFUSER DE PLACER L'ENFANT OU DE RETIRER L'ENFANT DÉJÀ PLACÉ

### Décision de la société ou du titulaire de permis

189 (1) Le présent article s'applique si, selon le cas :

- a) une société décide de refuser la demande d'adoption d'un enfant précis qu'a présentée un parent de famille d'accueil ou une autre personne;
- b) une société ou un titulaire de permis décide de retirer un enfant qui a été placé auprès d'une personne en vue de son adoption.

### Avis de la décision

(2) La société ou le titulaire de permis qui prend une décision visée au paragraphe (1) prend les mesures suivantes :

- a) il donne à la personne qui a présenté la demande d'adoption de l'enfant ou auprès de qui l'enfant avait été placé en vue de son adoption un avis écrit d'au moins 10 jours de sa décision;
- b) il joint à l'avis prévu à l'alinéa a) un avis informant la personne qu'elle a le droit de demander une révision de la décision en vertu du paragraphe (3);
- c) dans le cas d'un enfant inuit, métis ou de Premières Nations, il donne l'avis exigé par les alinéas a) et b) et :

- (i) donne un avis écrit d'au moins 10 jours de sa décision à un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient;
- (ii) après avoir donné l'avis, consulte les représentants de la bande ou de la communauté inuite, métisse ou de Premières Nations au sujet de la planification des soins à fournir à l'enfant.

**Droit à une audience**

(5) Lorsque le directeur donne un avis de sa décision de refuser le placement ou de l'approuver sous conditions, la personne auprès de qui l'enfant serait placé et le titulaire de permis ont droit à une audience devant la Commission.

**Application d'autres dispositions**

(6) Les articles 230 (audiences), 231 (révision des conditions), 263 (parties) et 264 (appel) s'appliquent à l'audience, avec les adaptations nécessaires, et, à cette fin, les mentions du Tribunal valent mention de la Commission.

**Prorogation du délai**

(7) Si elle est convaincue qu'il existe des motifs raisonnables pour que, d'une part, la personne auprès de qui l'enfant serait placé ou le titulaire de permis demande la prorogation du délai fixé pour demander l'audience et que, d'autre part, la mesure de redressement soit accordée, la Commission peut prendre les mesures suivantes :

- a) proroger le délai avant ou après son expiration;
- b) donner les directives qu'elle estime appropriées par suite de la prorogation du délai.

**Consignation des témoignages**

(8) Les témoignages recueillis devant la Commission lors de l'audience sont consignés.

**Placement à l'extérieur du Canada**

(9) Le directeur ne doit approuver le placement projeté d'un enfant hors du Canada que s'il est convaincu qu'une circonstance particulière prescrit le justifie.

**Enfant résidant hors du Canada : étude du milieu familial**

186 (1) Le titulaire de permis qui a l'intention d'amener en Ontario un enfant qui ne réside pas au Canada pour le placer en vue de son adoption remet au directeur le rapport sur l'étude du milieu familial de la personne auprès de qui l'enfant serait placé qui visait à évaluer la capacité juridique et l'aptitude de cette personne à adopter.

**Auteur du rapport**

(2) Le rapport sur l'étude du milieu familial est établi par une personne qui, de l'avis du directeur ou du directeur local, possède les compétences nécessaires à cette fin.

**Examen par le directeur**

(3) Le directeur examine promptement le rapport sur l'étude du milieu familial et, selon le cas :

- a) agréé sans condition la personne comme ayant la capacité juridique et l'aptitude à adopter;
- b) agréé la personne sous réserve des conditions qu'il juge appropriées;
- c) refuse d'agréer la personne.

**Avis**

(4) Le directeur donne promptement un avis de sa décision d'agréer, avec ou sans conditions, ou de refuser d'agréer la personne, selon le cas :

- a) d'une part, à la personne qui fait l'objet de l'étude du milieu familial;
- b) d'autre part, au titulaire de permis.

**Droit à une audience**

(5) Lorsque le directeur donne un avis de sa décision de refuser d'agréer la personne qui fait l'objet de l'étude du milieu familial ou de l'agréer sous conditions, cette personne a droit à une audience devant la Commission.

**Application d'autres dispositions**

(6) Les dispositions suivantes s'appliquent à l'audience :

- 1. Les articles 230 (audiences), 231 (révision des conditions), 263 (parties) et 264 (appel), avec les adaptations nécessaires, et, à cette fin, les mentions du Tribunal valent mention de la Commission.
- 2. Les paragraphes 185 (7) (prorogation du délai) et (8) (consignation des témoignages).

**Enfant résidant hors du Canada : examen du placement projeté**

187 (1) Si une personne a été agréée, avec ou sans conditions, comme ayant la capacité juridique et l'aptitude à adopter en application de l'article 186 et qu'un titulaire de permis a l'intention de placer un enfant auprès de cette personne en vue de son adoption, le titulaire de permis demande que le directeur examine le placement projeté.

## Enfant inuit, métis ou de Premières Nations

**183 (1)** La société qui a l'intention de commencer à planifier l'adoption d'un enfant inuit, métis ou de Premières Nations donne un avis écrit de son intention à un représentant qu'elle choisit chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

**Programme de soins proposé par une bande ou une communauté**

(2) Si un représentant qu'elle choisit chacune des bandes ou communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient reçoit l'avis prévu au paragraphe (1), chaque bande et communauté peut, dans les 60 jours suivant la réception de l'avis par le représentant, prendre les mesures suivantes :

- a) préparer son propre programme de soins à fournir à l'enfant;
- b) présenter son programme à la société.

## Condition applicable au placement

(3) Une société ne doit pas placer un enfant inuit, métis ou de Premières Nations auprès d'une personne en vue de son adoption tant que l'une ou l'autre des conditions suivantes n'est pas remplie :

- a) une période d'au moins 60 jours s'est écoulée depuis la remise de l'avis à un représentant qu'elle choisit chacune des bandes et communautés inuites, métisses ou de Premières Nations;
- b) la société a tenu compte du programme de soins à fournir à l'enfant que la bande ou la communauté inuite, métisse ou de Premières Nations lui a présenté, s'il y a lieu.

## Enfant inuit, métis ou de Premières Nations : ordonnance de communication et autres

**184 (1)** La société qui commence à planifier l'adoption d'un enfant inuit, métis ou de Premières Nations doit tenir compte de l'importance, pour l'enfant, de nouer ou de maintenir des liens avec les bandes et communautés inuites, métisses ou de Premières Nations auxquelles il appartient.

## Accord de communication ou ordonnance de communication

- (2) Pour l'application du paragraphe (1), la société tient compte des avantages de l'une ou l'autre des mesures suivantes :
  - a) un accord de communication à l'égard de l'enfant et d'un membre des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient;
  - b) si l'enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c), une ordonnance de communication à l'égard de l'enfant et d'un représentant des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

**Enfant résidant au Canada : placement projeté**

**185 (1)** Le titulaire de permis qui a l'intention de prendre l'une ou l'autre des mesures prévues au paragraphe 180 (3) avise le directeur du placement projeté et lui remet également un rapport sur l'étude du milieu familial de la personne auprès de qui l'enfant serait placé.

## Auteur du rapport

(2) Le rapport sur l'étude du milieu familial est établi par une personne qui, de l'avis du directeur ou du directeur local, possède les compétences nécessaires à cette fin.

## Examen par le directeur

(3) Le directeur examine promptement le rapport sur l'étude du milieu familial et, selon le cas :

- a) approuve le placement projeté;
- b) approuve le placement projeté sous réserve des conditions qu'il estime appropriées, notamment la surveillance du placement :

- (i) soit par une société, une personne ou un titulaire de permis précis,
- (ii) soit par un service de bien-être de l'enfance précis et reconnu dans l'autorité législative où a lieu le placement ou par une personne prescrite, si le placement a lieu hors de l'Ontario.

c) refuse d'approuver le placement projeté.

## Avis

(4) Le directeur donne promptement un avis de sa décision d'approuver, avec ou sans conditions, ou de refuser le placement, selon le cas :

- a) à la personne auprès de qui l'enfant serait placé;
- b) au titulaire de permis.



## Approbation du placement projeté par le directeur

(3) Aucun titulaire de permis, à l'exception de celui qui bénéficie de l'exemption prévue au paragraphe (6), ne doit prendre l'une ou l'autre des mesures suivantes sans avoir au préalable obtenu l'approbation du directeur prévue à l'article 185 en ce qui concerne le placement projeté :

1. Placer un enfant qui réside au Canada auprès d'une personne en vue de son adoption.
2. Amener ou envoyer hors de l'Ontario, ou tenter de le faire, un enfant qui réside en Ontario pour le placer en vue de son adoption.

## Placement d'un enfant résidant hors du Canada

(4) Aucun titulaire de permis visé au paragraphe (2) ne doit amener en Ontario un enfant qui ne réside pas au Canada pour le placer en vue de son adoption sans :

- a) avoir obtenu au préalable l'approbation du directeur prévue à l'article 186 selon laquelle la personne auprès de qui l'enfant doit être placé a la capacité juridique et l'aptitude à adopter;
- b) une fois l'approbation visée à l'alinéa a) obtenue, avoir obtenu l'approbation du directeur prévue à l'article 187 en ce qui concerne le placement projeté.

## Approbation du directeur exigée

(5) Nul ne doit accueillir un enfant en vue de son adoption, sauf si l'enfant provient d'une société ou d'un titulaire de permis qui bénéficie de l'exemption prévue au paragraphe (6), sans avoir au préalable obtenu du directeur l'approbation prévue au paragraphe 185 (3) ou 187 (2), selon le cas.

## Désignation du titulaire de permis

(6) Le directeur peut désigner un titulaire de permis qui est une agence comme exempté des exigences du paragraphe (3).

## Enregistrement des placements

(7) La société ou le titulaire de permis qui place un enfant auprès d'une personne en vue de son adoption enregistre le placement de la manière prescrite dans les 30 jours suivant le placement.

## Idem : directeur

(8) Le directeur qui prend connaissance d'un placement qui n'est pas enregistré conformément au paragraphe (7) l'enregistre promptement de la manière prescrite.

## Exception : adoptions par la famille au Canada

(9) Les paragraphes (1), (2), (3), (5), (7) et (8) ne s'appliquent pas :

- a) au placement d'un enfant en vue de son adoption auprès d'un membre de sa parenté, d'un parent ou du conjoint d'un parent, si l'enfant qui doit faire l'objet du placement réside au Canada et que le placement a lieu en Ontario;
- b) au fait d'amener ou d'envoyer un enfant hors de l'Ontario en vue de son adoption par un membre de sa parenté, un parent ou le conjoint d'un parent, si le placement a lieu au Canada.

## Restrictions applicables aux placements par une société

181 Une société ne doit placer, en vue de son adoption, un enfant confié à ses soins de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) que dans l'un ou l'autre des cas suivants :

- a) le délai pour interjeter appel de l'ordonnance a expiré;
- b) il y a eu règlement définitif ou désistement de tout appel de l'ordonnance.

## Planification d'une adoption

182 (1) La présente loi n'a pas pour effet d'interdire à une société de planifier l'adoption d'un enfant confié à ses soins de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) et à l'égard duquel une ordonnance de visite rendue sous le régime de la partie V (Protection de l'enfance) est en vigueur.

## Ordonnance ou accord de communication

(2) La société qui commence à planifier l'adoption d'un enfant confié à ses soins de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) doit tenir compte des avantages d'une ordonnance ou d'un accord de communication à l'égard de l'enfant.

**Retrait du consentement**  
(8) La personne qui donne le consentement prévu au paragraphe (2) ou (6) peut le retirer par écrit dans les 21 jours. Si elle avait la garde de l'enfant immédiatement avant de donner son consentement, l'enfant doit lui être rendu dès le retrait du consentement.

**Permission de passer outre à l'obtention du consentement**  
(9) Le tribunal peut permettre de passer outre à l'obligation d'obtenir le consentement de la personne prévue au paragraphe (6) s'il est convaincu :

a) soit que le fait d'obtenir ce consentement causerait à la personne des maux affectifs;

b) soit que la personne n'est pas en mesure de donner son consentement en raison d'une déficience intellectuelle.

**Consentement du conjoint**  
(10) Lorsqu'une personne a un conjoint, aucune ordonnance d'adoption ne doit être rendue suite à la requête de cette personne sans le consentement écrit de son conjoint.

**Consentement d'un mineur : rôle de l'avocat des enfants**

(11) Si la personne qui donne le consentement prévu à l'alinéa (2) a) a moins de 18 ans, le consentement n'est valide que si l'avocat des enfants est convaincu qu'il a été donné en pleine connaissance de cause et qu'il reflète les vrais désirs de la personne.

**Affidavit du témoin à la signature**

(12) L'affidavit du témoin à la signature, rédigé sous la forme prescrite, est annexé au consentement et au retrait de consentement prévu au présent article.

**Forme du consentement donné hors de l'Ontario**

(13) N'est pas nul d'office le consentement exigé en application du présent article qui est donné hors de l'Ontario et dont la forme n'est pas conforme aux exigences du paragraphe (12) et des règlements si sa forme est conforme aux lois de l'autorité législative dans laquelle il est donné.

**Permission de passer outre à l'obtention du consentement**

**178** Le tribunal peut permettre de passer outre à l'obligation d'obtenir le consentement prévu à l'article 177 en vue de l'adoption d'un enfant, à l'exclusion du consentement de l'enfant ou du directeur, s'il est convaincu :

a) d'une part, que cette mesure est dans l'intérêt véritable de l'enfant;

b) d'autre part, que la personne dont le consentement est exigé a reçu un avis de l'adoption projetée et de la requête visant à passer outre à l'obtention de son consentement ou que des efforts suffisants ont été faits pour lui remettre cet avis.

**Retrait tardif du consentement**

**179** (1) Le tribunal peut autoriser l'auteur du consentement à l'adoption d'un enfant prévu à l'article 177 à retirer son consentement après le délai de 21 jours prévu au paragraphe 177 (8) s'il est convaincu que cette mesure est dans l'intérêt véritable de l'enfant. Si l'auteur du consentement avait la garde de l'enfant immédiatement avant de donner son consentement, l'enfant doit lui être rendu dès le retrait du consentement.

**Exception : enfant placé en vue de son adoption**

(2) Le paragraphe (1) ne s'applique pas si l'enfant a été placé auprès d'une personne en vue de son adoption et demeure confié aux soins de cette personne.

## PLACEMENT EN VUE D'UNE ADOPTION

**Placement d'enfants : pouvoir exclusif des sociétés et des titulaires de permis**

**180** (1) Nul ne doit, à l'exception d'une société ou d'un titulaire de permis :

a) placer un enfant auprès d'une personne en vue de son adoption;

b) amener ou envoyer hors de l'Ontario, ou tenter de le faire, un enfant qui réside en Ontario pour le placer en vue de son adoption.

**Enfants amenés en Ontario : pouvoir exclusif des sociétés et de certains titulaires de permis**

(2) À l'exception d'une société ou du titulaire d'un permis contenant une clause l'autorisant à agir dans le cadre du présent paragraphe, nul ne doit amener en Ontario un enfant qui n'est pas résident de la province pour le placer en vue de son adoption.

2. Dans le cas d'un enfant conçu par relation sexuelle, tout particulier visé à l'une des dispositions 1 à 5 du paragraphe 7 (2) de la *Loi portant réforme du droit de l'enfance*, à moins qu'il ne soit prouvé par la prépondérance des probabilités que le sperme utilisé pour concevoir l'enfant ne provenait pas du particulier.
3. Le particulier dont le statut en tant que parent de l'enfant a été établi ou reconnu par un tribunal compétent hors de l'Ontario.
4. Dans le cas d'un enfant adopté, un parent de l'enfant comme le prévoit l'article 214 ou 215 de la présente loi.
5. Le particulier qui a la garde légitime de l'enfant.
6. Le particulier qui, au cours des 12 mois qui ont précédé le placement de l'enfant en vue de son adoption sous le régime de la présente partie, a manifesté l'intention bien arrêtée de traiter l'enfant comme s'il s'agissait d'un enfant de sa famille ou a reconnu le lien de filiation qui l'unit à l'enfant et a subvenu à ses besoins.
7. Le particulier qui, aux termes d'une entente écrite ou d'une ordonnance d'un tribunal, est tenu de subvenir aux besoins de l'enfant, s'en est vu accorder la garde ou possède un droit de visite.
8. Le particulier qui a reconnu le lien de filiation qui l'unit à l'enfant en déposant une déclaration solennelle en vertu de l'article 12 de la *Loi portant réforme du droit de l'enfance*, dans sa version antérieure au jour de l'entrée en vigueur du paragraphe 1 (1) de la *Loi de 2016 sur l'égalité de toutes les familles (modifiant des lois en ce qui concerne la filiation et les enregistrements connexes)*.

### Consentement d'un parent

- (2) L'ordonnance portant sur l'adoption d'un enfant de moins de 16 ans, ou de 16 ans ou plus mais qui ne s'est pas soustraite à l'autorité parentale, ne doit pas être rendue sans :
  - a) soit le consentement écrit de chaque parent;
  - b) soit le consentement écrit du directeur, si l'enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c).
- (3) Le consentement prévu à l'alinéa (2) a) ne doit pas être donné tant que l'enfant n'a pas sept jours.

### Idem

- (4) Si une société ou un titulaire de permis place un enfant en vue de son adoption, le consentement prévu à l'alinéa (2) a) ne doit pas être donné tant que :
  - a) la société ou le titulaire de permis n'a pas avisé le parent de ses droits suivants :
    - (i) celui de retirer son consentement en vertu du paragraphe (8),
    - (ii) celui d'être informé, à sa demande, si une ordonnance d'adoption a été rendue à l'égard de l'enfant;
  - b) la société ou le titulaire de permis n'a pas avisé le parent des autres questions prescrites;
  - c) la société ou le titulaire de permis n'a pas donné l'occasion au parent de demander des services de counseling et des conseils juridiques auprès de personnes indépendantes en ce qui concerne le consentement.

### Garde de l'enfant

- (5) Les droits et responsabilités des parents de l'enfant relativement à la garde de l'enfant, aux soins à lui donner et à la surveillance dont il doit faire l'objet passent à la société ou au titulaire de permis jusqu'à ce que le consentement soit retiré en application du paragraphe 179 (1) (retrait tardif avec autorisation du tribunal) ou jusqu'à ce qu'une ordonnance d'adoption soit rendue en vertu de l'article 196 si les conditions suivantes sont réunies :
  - a) la société ou le titulaire de permis place l'enfant en vue de son adoption;
  - b) chaque consentement exigé en application du paragraphe (2) a) a été donné et n'a pas été retiré en vertu du paragraphe (8);
  - c) la période de 21 jours visée au paragraphe (8) a expiré.

### Consentement de l'adopté

- (6) L'ordonnance portant sur l'adoption d'une personne de sept ans ou plus ne doit pas être rendue sans le consentement écrit de cette personne.

### Idem

- (7) Le consentement prévu au paragraphe (6) ne doit être donné que lorsque la personne a eu l'occasion d'obtenir des services de counseling et des conseils juridiques auprès de personnes indépendantes en ce qui concerne le consentement.



2. Les besoins physiques, mentaux et affectifs de l'enfant, et les soins ou le traitement qui conviennent pour répondre à ces besoins;
3. Le niveau de développement physique, mental et affectif de l'enfant;
4. La race de l'enfant, son ascendance, son lieu d'origine, sa couleur, son origine ethnique, sa citoyenneté, la diversité de sa famille, son handicap, sa croyance, son sexe, son orientation sexuelle, son identité sexuelle et l'expression de son identité sexuelle;
5. Le patrimoine culturel et linguistique de l'enfant;
6. L'importance, en ce qui concerne le développement de l'enfant, d'une relation positive avec un parent et d'une place sûre en tant que membre d'une famille;
7. Les relations et les liens affectifs de l'enfant avec un parent, un frère ou une sœur, un membre de sa parenté, un membre de sa famille élargie ou un membre de sa communauté;
8. L'importance de la continuité en ce qui concerne les soins à fournir à l'enfant et les conséquences que peut avoir sur lui toute interruption de cette continuité;
9. Les conséquences sur l'enfant de tout retard relativement à la solution de son cas;
10. Tout autre facteur pertinent;

#### **Enfant inuit, métis ou de Premières Nations**

(3) La personne tenue, en application de la présente partie, de rendre une ordonnance ou de prendre une décision dans l'intérêt véritable d'un enfant inuit, métis ou de Premières Nations doit également tenir compte de l'importance de préserver l'identité culturelle de l'enfant et les liens qui l'unissent à la communauté en reconnaissance du caractère unique que revêtent la culture, le patrimoine et les traditions propres aux Premières Nations, aux Inuits et aux Métis.

#### **Intérêt véritable de l'enfant**

(2) La personne tenue, en application de la présente partie, de rendre une ordonnance ou de prendre une décision dans l'intérêt véritable d'un enfant étudie ce qui suit :

- a) l'opinion et les désirs de l'enfant, qui doivent être dûment pris en considération eu égard à son âge et à son degré de maturité, sauf s'ils ne peuvent être établis;
- b) dans le cas d'un enfant inuit, métis ou de Premières Nations, l'importance de préserver l'identité culturelle de l'enfant et les liens qui l'unissent à la communauté en reconnaissance du caractère unique que revêtent la culture, le patrimoine et les traditions propres aux Premières Nations, aux Inuits et aux Métis, et les éléments prévus aux alinéas a) et c);
- c) tout autre facteur que la personne juge pertinent, notamment :

- (i) les besoins physiques, mentaux et affectifs de l'enfant, et les soins ou le traitement qui conviennent pour répondre à ces besoins;
- (ii) le niveau de développement physique, mental et affectif de l'enfant;
- (iii) la race de l'enfant, son ascendance, son lieu d'origine, sa couleur, son origine ethnique, sa citoyenneté, la diversité de sa famille, son handicap, sa croyance, son sexe, son orientation sexuelle, son identité sexuelle et l'expression de son identité sexuelle;
- (iv) le patrimoine culturel et linguistique de l'enfant;
- (v) l'importance, en ce qui concerne le développement de l'enfant, d'une relation positive avec un parent et d'une place sûre en tant que membre d'une famille;
- (vi) les relations et les liens affectifs de l'enfant avec un parent, un frère ou une sœur, un membre de sa parenté, un membre de sa famille élargie ou un membre de sa communauté;
- (vii) l'importance de la continuité en ce qui concerne les soins à fournir à l'enfant et les conséquences que peut avoir sur lui toute interruption de cette continuité;
- (viii) les conséquences sur l'enfant de tout retard relativement à la solution de son cas.

#### **CONSENTEMENT À L'ADOPTION**

#### **Consentements**

**177 (1)** La définition qui suit s'applique au présent article.

«parent» En ce qui concerne un enfant, s'entend de chacune des personnes suivantes, à l'exclusion toutefois d'un titulaire de permis ou d'un parent de famille d'accueil :

1. Un parent de l'enfant aux termes de l'article 6, 8, 9, 10, 11 ou 13 de la *Loi portant réforme du droit de l'enfance*.

Fonctions de la Commission

(3) À la demande du ministre, la Commission professionnelle consultative exerce les fonctions suivantes et fait des recommandations au ministre :

- a) elle conseille le ministre sur la prescription de techniques comme techniques d'ingérence;
- b) elle enquête sur l'utilisation de techniques d'ingérence et de psychotropes, examine cette question et fait des recommandations au ministre;
- c) elle examine les pratiques et protocoles des fournisseurs de services en ce qui concerne :

(i) la désescalade sous clé,

(ii) les techniques d'ingérence,

(iii) les psychotropes.

Demande d'examen

175 Une personne peut demander que le ministre charge la Commission professionnelle consultative d'enquêter soit sur l'utilisation d'une pièce de désescalade sous clé ou d'une technique d'ingérence à l'égard d'un enfant ou d'un adolescent, soit sur l'administration d'un psychotrope à un enfant ou à un adolescent, et d'examiner cette question.

PARTIE VIII

ADOPTION ET DELIVRANCE DE PERMIS RELATIFS À L'ADOPTION

INTERPRÉTATION

Interprétation

176 (1) Les définitions qui suivent s'appliquent à la présente partie.

«accord de communication» Accord visé à l'article 209. («openness agreement»)

«conjoint» S'entend au sens des parties I et II du *Code des droits de la personne*. («spouse»)

«frère ou soeur de naissance» Relativement à une personne, s'entend d'un enfant qui a le même parent de naissance que cette personne. S'entend en outre de l'enfant adopté par le parent de naissance et d'une personne que le parent de naissance a l'intention bien arrêtée et manifeste de traiter comme un enfant de sa famille. («birth sibling»)

«membre de la parenté de naissance» S'entend :

a) relativement à un enfant qui n'a pas été adopté, d'un membre de la parenté de l'enfant;

b) relativement à un enfant qui a été adopté, d'une personne qui aurait été un membre de la parenté de l'enfant s'il n'avait pas été adopté. («birth relative»)

«ordonnance de communication» Ordonnance rendue par un tribunal conformément à la présente loi en vue de faciliter la communication ou de maintenir une relation entre l'enfant et, selon le cas :

a) un parent de naissance, un frère ou une soeur de naissance, ou un membre de sa parenté de naissance;

b) une personne avec qui il entretient une relation importante ou des liens affectifs importants, notamment un parent de famille d'accueil ou un membre de sa famille élargie ou de sa communauté;

c) dans le cas d'un enfant inuit, méti ou de Premières Nations :

(i) une personne visée à l'alinéa a) ou b),

(ii) un membre des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient et qui peut ne pas avoir entretenu une relation importante ou des liens affectifs importants avec l'enfant dans le passé, mais qui l'aidera à nouer ou à maintenir des liens avec la culture, le patrimoine et les traditions des communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient et à préserver son identité culturelle et les liens qui l'unissent à la communauté. («openness order»)

«parent de naissance» Personne qui satisfait aux critères prescrits. («birth parent»)

Intérêt véritable de l'enfant

(2) La personne tenue, en application de la présente partie, de rendre une ordonnance ou de prendre une décision dans l'intérêt véritable de l'enfant étudie les facteurs suivants qu'elle juge pertinents :

— 1. L'opinion et les desirs de l'enfant, qui doivent être dûment pris en considération eu égard à son âge et à son degré de maturité.

**Périodes maximales**

(8) Sous réserve du paragraphe (9), aucun enfant ou adolescent ne doit être gardé dans une pièce de désescalade sous clé pendant une ou des périodes dépassant en tout soit huit heures au cours d'une période donnée, soit 24 heures au cours d'une semaine donnée.

**Exception**

(9) Le fournisseur de services n'est pas tenu de se conformer aux paragraphes (5) et (8) dans le cas d'adolescents de 16 ans ou plus gardés dans un lieu de garde en milieu fermé ou de détention provisoire en milieu fermé. Il doit toutefois se conformer aux normes et protocoles prescrits en ce qui concerne la garde de ces adolescents dans de tels lieux.

**Exception**

(9) Le fournisseur de services n'est pas tenu de se conformer aux paragraphes (5) et (8) dans le cas d'adolescents de 16 ans ou plus gardés dans un lieu de garde en milieu fermé ou de détention provisoire en milieu fermé. Il doit toutefois se conformer aux normes et protocoles suivants ainsi qu'aux normes et protocoles supplémentaires prescrits, le cas échéant :

1. L'adolescent doit être surveillé toutes les 15 minutes par une personne responsable et les résultats de cette surveillance doivent être consignés au dossier de l'adolescent.

2. Le fournisseur de services doit décider, compte tenu des besoins de l'adolescent, si ce dernier devrait être surveillé à intervalles réguliers plus fréquents que toutes les 15 minutes et, si cette décision est prise, l'adolescent doit être surveillé par une personne responsable aux intervalles plus fréquents qu'a décidés le fournisseur de service et les résultats de cette surveillance doivent être consignés au dossier de l'adolescent.

3. L'adolescent ne doit pas être gardé dans une pièce de désescalade sous clé pendant une période continue de plus de 24 heures ou pendant une ou des périodes totalisant plus de 24 heures par période de sept jours.

4. Malgré la disposition 3, le fournisseur de services peut prolonger, avec l'approbation du directeur provincial, pour une période continue de plus de 24 heures ou pour des périodes totalisant plus de 24 heures dans une période donnée de sept jours, le placement de l'adolescent dans une pièce de désescalade sous clé.

5. Le directeur provincial peut approuver la prolongation du placement de l'adolescent dans une pièce de désescalade sous clé pour une période de plus de 24 heures continues ou pour des périodes totalisant plus de 24 heures dans une période donnée de sept jours s'il a des motifs raisonnables et probables de croire que le placement de l'adolescent dans une telle pièce est nécessaire pour assurer la sécurité des membres du personnel ou des adolescents se trouvant dans l'établissement.

**Examen de la nécessité d'une pièce de désescalade sous clé**

172 Tous les trois mois ou, dans le cas d'une garde en milieu fermé ou d'une détention provisoire en milieu fermé, tous les six mois à partir de la date à laquelle la pièce de désescalade sous clé est agréée en vertu du paragraphe 170 (1), le responsable des locaux où se trouve cette pièce examine :

a) la nécessité de cette pièce;

b) les questions prescrites.

Il fournit au directeur un rapport d'examen écrit, ainsi que les rapports supplémentaires prescrits.

**PSYCHOTROPES**

**Utilisation de psychotropes : consentement exigé**

173 Le fournisseur de services ne doit ni administrer un psychotrope à un enfant ou à un adolescent confié à ses soins, ni permettre que lui soit administré un tel médicament, sans le consentement prévu conformément à la Loi de 1996 sur le consentement aux soins de santé.

**COMMISSION PROFESSIONNELLE CONSULTATIVE**

**Constitution de la Commission**

174 (1) Le ministre peut constituer la Commission professionnelle consultative. La Commission se compose de médecins et d'autres professionnels qui ont les qualités requises suivantes :

a) ils possèdent des connaissances particulières en ce qui concerne l'utilisation de techniques d'ingénierie et de psychotropes;

b) ils sont bien renseignés et ont manifesté un intérêt pour le bien-être des enfants;

c) ils ne sont pas employés au ministère.

**Président**

(2) Le ministre nomme un des membres de la Commission professionnelle consultative à la présidence.



**Appréhension d'un enfant qui est sorti**

- (2) Si un enfant admis à un programme de traitement en milieu fermé quitte l'établissement où est offert le programme sans le consentement de l'administrateur, un agent de la paix peut l'appréhender, même sans mandat, et le renvoyer à l'établissement.

**Durée du placement**

- (3) Si un enfant est renvoyé à un établissement en vertu du paragraphe (2), son absence de l'établissement n'entre pas dans le calcul de la durée du placement.

**DÉSESCALADE SOUS CLÉ****Accord du directeur**

- 170 (1) Le directeur peut, aux conditions qu'il précise, agréer, pour la mise en oeuvre de mesures de désescalade face à des situations et à des comportements impliquant des enfants ou des adolescents, une pièce fermée à clé qui est conforme aux normes prescrites et qui se trouve dans les locaux où un service est fourni.

**Retrait de l'accord**

- (2) S'il est d'avis qu'une pièce de désescalade sous clé est inutile ou est utilisée d'une manière qui contrevient à la présente partie ou aux règlements, le directeur peut retirer l'accord qu'il a donné en vertu du paragraphe (1). Il doit alors donner au fournisseur de services concerné un avis motivé de sa décision.

**Désescalade interdite**

- 171 (1) Aucun fournisseur de services ou parent de famille d'accueil ne doit placer un enfant ou un adolescent confié à ses soins dans une pièce fermée à clé, ni permettre qu'il y soit placé, si ce n'est conformément au présent article et aux règlements.

**Fermeture à clé habituelle de certains locaux**

- (2) Le paragraphe (1) n'interdit pas la fermeture à clé habituelle, la nuit, de pièces qui se trouvent dans les locaux où sont offerts des programmes de traitement en milieu fermé ou dans des lieux de garde en milieu fermé et des lieux de détention provisoire en milieu fermé en vertu de la partie VI (Justice pour les adolescents).

**Désescalade : critères**

- (3) Un enfant ou un adolescent peut être placé dans une pièce de désescalade sous clé si les critères suivants sont remplis :
- a) le fournisseur de services est d'avis que :
    - (i) d'une part, la conduite de l'adolescent indique qu'il risque vraisemblablement, dans l'avenir immédiat, d'endommager sérieusement des biens ou d'infliger à une autre personne des lésions corporelles graves,
    - (ii) d'autre part, aucune autre méthode de contrainte moins restrictive n'est possible;
  - b) si l'enfant a moins de 12 ans, le directeur permet qu'il soit placé dans une telle pièce en raison de circonstances exceptionnelles.

**Limite d'une heure**

- (4) L'enfant ou l'adolescent placé dans une pièce de désescalade sous clé doit être libéré dans l'heure, sauf si le responsable des locaux approuve par écrit son maintien dans cette pièce et consigne les raisons justifiant le non-recours à une méthode de contrainte moins restrictive.

**Surveillance constante**

- (5) Sous réserve du paragraphe (9), le fournisseur de services veille à ce que l'enfant ou l'adolescent placé dans une pièce de désescalade sous clé soit constamment surveillé par une personne responsable.

**Examen**

- (6) Si l'enfant ou l'adolescent est placé dans une pièce de désescalade sous clé pendant plus d'une heure, le responsable des locaux examine le placement aux intervalles prescrits.

**Libération de l'enfant ou de l'adolescent**

- (7) L'enfant ou l'adolescent placé dans une pièce de désescalade sous clé est libéré aussitôt que le responsable est convaincu qu'il ne risque plus vraisemblablement, dans l'avenir immédiat, d'endommager sérieusement des biens ou d'infliger à une personne des lésions corporelles graves.

(c) si l'enfant a moins de 16 ans, son parent ou, si l'enfant est confié à la garde légitime d'une société, la société, consent à son admission.

#### **Enfant de moins de 12 ans**

(4) Si l'enfant a moins de 12 ans, l'administrateur ne doit pas l'admettre en vertu du paragraphe (2), sauf si le ministre consent à l'admission de l'enfant.

#### **Exigence supplémentaire : médecin**

(5) Si l'auteur de la demande est un médecin, l'administrateur ne doit admettre l'enfant en vertu du paragraphe (2) que s'il est convaincu que l'auteur de la demande croit que les critères énoncés dans ce paragraphe sont remplis.

#### **Avais exigés**

(6) L'administrateur veille à ce que les mesures suivantes soient prises dans les 24 heures de l'admission d'un enfant à un programme de traitement en milieu fermé en vertu du paragraphe (2) :

(a) l'enfant reçoit un avis écrit l'informant du droit qui lui est accordé par le paragraphe (9) de demander la révision de son placement;

(b) l'intervenant provincial en faveur des enfants et des jeunes et l'avocat des enfants sont avisés de l'admission de l'enfant.

#### **Explication obligatoire**

(7) L'intervenant provincial en faveur des enfants et des jeunes veille à ce que, dès que possible après la réception de l'avis, une personne qui n'est pas employée par l'établissement de traitement en milieu fermé explique à l'enfant, dans un langage adapté à son niveau de compréhension, qu'il a le droit de demander la révision de son placement.

#### **Explication obligatoire**

(7) L'intervenant provincial en faveur des enfants et des jeunes veille à ce que, dès que possible après la réception de l'avis, une personne qui n'est pas employée pour fournir des services dans le cadre du programme de traitement en milieu fermé explique à l'enfant, dans un langage que celui-ci peut comprendre, qu'il a le droit de demander la révision de son placement.

#### **Obligation de l'avocat des enfants**

(8) L'avocat des enfants représente l'enfant dès que possible et, en tout état de cause, dans les cinq jours suivant la réception de l'avis prévu au paragraphe (6), à moins qu'il ne soit convaincu qu'une autre personne agira à titre d'avocat de l'enfant dans ce délai.

#### **Requête en révision**

(9) Si un enfant est admis à un programme de traitement en milieu fermé en vertu du présent article, quiconque, y compris l'enfant, peut, par voie de requête, demander à la Commission de rendre une ordonnance de mise en congé de l'enfant de ce programme.

#### **Possibilité de garder l'enfant dans le programme en attendant la décision**

(10) Si une requête est présentée en vertu du paragraphe (9), l'enfant peut être gardé dans le programme de traitement en milieu fermé en attendant qu'une décision soit rendue au sujet de la requête.

#### **Procédure**

(11) Les paragraphes 158 (7), (8) et (9) (audience) et l'article 159 (renonciation aux témoignages oraux) s'appliquent, avec les adaptations nécessaires, à la requête présentée en vertu du paragraphe (9).

#### **Délai pour la révision**

(12) Si une requête est présentée en vertu du paragraphe (9), la Commission rend sa décision dans les cinq jours suivant la présentation de la requête.

#### **Ordonnance**

(13) La Commission doit rendre une ordonnance de mise en congé de l'enfant du programme de traitement en milieu fermé, sauf si elle est convaincue que l'enfant remplit les critères d'admission d'urgence énoncés aux alinéas (2) a) à e).

#### **AIDE DE LA POLICE**

#### **Pouvoirs des agents de la paix, durée du placement**

#### **Enfant amené par la police**

169 (1) Un agent de la paix peut amener un enfant dans un lieu où existe un programme de traitement en milieu fermé :

- (a) soit pour le faire admettre d'urgence, à la demande d'une personne visée au paragraphe 168 (1);
- (b) soit parce qu'une ordonnance de placement de l'enfant dans un programme de traitement en milieu fermé a été rendue en vertu de l'article 161.

(c) aucune méthode moins restrictive qui convient au traitement du trouble mental de l'enfant n'est appropriée dans les circonstances;

(d) l'enfant reçoit soit le traitement qui a été proposé lorsque l'ordonnance la plus récente a été rendue en vertu du paragraphe 161 (1) ou 164 (5), soit un autre traitement approprié.

#### Idem

(4) Lorsqu'il rend une ordonnance en vertu du paragraphe (3), le tribunal examine s'il existe un programme approprié de soins à fournir à l'enfant à son congé.

#### Application des paragraphes 164 (3) à (6) et des articles 165 et 166

167 Les paragraphes 164 (3), (4), (5) et (6) et les articles 165 et 166 s'appliquent, avec les adaptations nécessaires, à une personne de 18 ans ou plus qui est placée dans un programme de traitement en milieu fermé comme si elle était un enfant.

#### ADMISSION D'URGENCE

#### Admission d'urgence

168 (1) L'une ou l'autre des personnes suivantes peut demander à l'administrateur de placer d'urgence un enfant dans un programme de traitement en milieu fermé :

1. Si l'enfant a moins de 16 ans :

i. un parent de l'enfant,

ii. une personne qui s'occupe de l'enfant, avec le consentement d'un parent,

~~iii. un préposé à la protection de l'enfance qui a appréhendé l'enfant en vertu de l'article 80,~~

~~iii. un préposé à la protection de l'enfance qui a amené l'enfant dans un lieu sûr en vertu de l'article 80,~~

iv. la société qui a la garde de l'enfant en application d'une ordonnance rendue sous le régime de la partie V (Protection de l'enfance).

2. Si l'enfant a 16 ans ou plus :

i. l'enfant lui-même,

ii. un parent de l'enfant, si l'enfant consent à la demande,

iii. la société qui a la garde de l'enfant en application d'une ordonnance rendue sous le régime de la partie V (Protection de l'enfance), si l'enfant consent à la demande,

iv. un médecin.

#### Admission : critères

(2) En cas de demande visée au paragraphe (1), l'administrateur peut placer un enfant dans un programme de traitement en milieu fermé pendant au plus 30 jours s'il croit, en se fondant sur des motifs raisonnables, que les critères suivants sont remplis :

a) l'enfant a un trouble mental;

b) l'enfant, par suite de ce trouble mental, s'est infligé ou a tenté de s'infliger des lésions corporelles graves, en a infligées ou a tenté d'en infliger à une autre personne, ou a sérieusement menacé, au moyen de paroles ou d'actes, de s'en infliger ou d'en infliger à une autre personne;

c) le programme de traitement en milieu fermé permettrait efficacement d'empêcher que l'enfant s'inflige ou tente de s'infliger des lésions corporelles graves ou en inflige ou tente d'en infliger à une autre personne;

d) un traitement qui convient au trouble mental de l'enfant est disponible au lieu du traitement en milieu fermé auquel se rapporte la demande;

e) aucune méthode moins restrictive qui convient au traitement du trouble mental de l'enfant n'est appropriée dans les circonstances.

#### Admission avec consentement

(3) L'administrateur peut admettre l'enfant en vertu du paragraphe (2) même si le critère énoncé à l'alinéa (2) b) n'est pas rempli si les conditions suivantes sont réunies :

a) les autres critères énoncés au paragraphe (2) sont remplis;

b) l'enfant, après avoir obtenu des conseils juridiques, consent à son admission;



**Prorogation : critères**  
(5) Le tribunal ne peut, au moyen d'une ordonnance, proroger le placement d'un enfant dans un programme de traitement en milieu fermé que s'il est convaincu que les critères suivants sont remplis :

- a) l'enfant a un trouble mental;
- b) le programme de traitement en milieu fermé permettrait efficacement d'empêcher que l'enfant s'inflige ou tente de s'infliger des lésions corporelles graves ou en inflige ou tente d'en infliger à une autre personne;
- c) aucune méthode moins restrictive qui convient au traitement du trouble mental de l'enfant n'est appropriée dans les circonstances;
- d) l'enfant reçoit soit le traitement qui a été proposé lorsque l'ordonnance originale a été rendue en vertu du paragraphe 161 (1), soit un autre traitement approprié;
- e) un programme approprié de soins à fournir à l'enfant à son congé existe.

### **Durée de la prorogation**

(6) Le tribunal précise, dans l'ordonnance rendue en vertu du paragraphe (5), la durée du placement de l'enfant, qui ne peut dépasser 180 jours, dans un programme de traitement en milieu fermé.

### **CONGÉ ACCORDÉ PAR L'ADMINISTRATEUR**

#### **Congé**

#### **Congé sans condition**

**165 (1)** L'administrateur peut accorder un congé sans condition à l'enfant placé dans un programme de traitement en milieu fermé si :

- a) d'une part, il a donné un préavis raisonnable de son intention à la personne qui a la garde légitime de l'enfant;
- b) d'autre part, il est convaincu des deux points suivants :

- (i) l'enfant n'a plus besoin du traitement en milieu fermé,
- (ii) un programme approprié de soins à fournir à l'enfant à son congé existe.

#### **Congé avec conditions**

(2) L'administrateur peut accorder à l'enfant placé dans un programme de traitement en milieu fermé un congé temporaire pour des raisons d'ordre médical, pour un événement de famille ou pour un placement à l'essai en milieu ouvert. Il fixe la durée et les conditions de ce congé.

#### **Congé malgré une ordonnance**

(3) Les paragraphes (1) et (2) s'appliquent malgré une ordonnance rendue en vertu du paragraphe 161 (1) (placement) ou 164 (5) (prorogation).

### **RÉVISION DU PLACEMENT**

#### **Révision du placement**

**166 (1)** L'une ou l'autre des personnes suivantes peut demander au tribunal, par voie de requête, de rendre une ordonnance révoquant une ordonnance rendue en vertu du paragraphe 161 (1) (placement) ou 164 (5) (prorogation) :

- 1. L'enfant, s'il a 12 ans ou plus.
- 2. Un parent de l'enfant.
- 3. La société qui prend soin de l'enfant, le garde ou le surveille.

#### **Application des paragraphes 158 (3) et (6) à (9) et des articles 159 et 160**

(2) Les paragraphes 158 (3), (6), (7), (8) et (9) (audience) et les articles 159 (renonciation aux témoignages oraux) et 160 (évaluation) s'appliquent, avec les adaptations nécessaires, à la requête présentée en vertu du paragraphe (1).

#### **Révocation de l'ordonnance**

(3) Le tribunal rend une ordonnance révoquant le placement de l'enfant, sauf s'il est convaincu que les critères suivants sont remplis :

- a) l'enfant a un trouble mental;
- b) le programme de traitement en milieu fermé continuerait de permettre efficacement d'empêcher que l'enfant s'inflige ou tente de s'infliger des lésions corporelles graves ou en inflige ou tente d'en infliger à une autre personne;

a) un parent de l'enfant ne consente à un placement plus long;

b) l'enfant ne fasse l'objet d'une ordonnance le confiant aux soins d'une société de façon prolongée et la disposition 2 du paragraphe 98 (1) ou d'une ordonnance le confiant aux soins d'une société de façon prolongée et rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c).

L'enfant ne doit en aucun cas être placé dans un programme de traitement en milieu fermé pendant une période plus longue que celle précisée en application du paragraphe (1).

#### Calcul des jours

(3) Les jours passés dans un programme de traitement en milieu fermé soit avant qu'une ordonnance soit rendue en vertu de l'article 161 (placement), soit en attendant qu'une requête soit présentée en vertu de l'article 164 (prorogation) entrent dans le calcul de la durée du placement de l'enfant.

#### Cas où la personne a 18 ans

(4) La personne qui fait l'objet d'une ordonnance rendue en vertu du paragraphe 161 (1) ou 164 (5) peut être gardée dans un programme de traitement en milieu fermé après avoir atteint l'âge de 18 ans, et ce jusqu'à l'expiration de l'ordonnance.

#### Motifs, programme de soins

163 (1) Le tribunal qui rend une ordonnance en vertu du paragraphe 161 (1) ou 164 (5) :

a) motive sa décision;

b) donne un énoncé du programme de soins, s'il y en a un, qui sera offert à l'enfant à son congé;

c) donne un énoncé des solutions de rechange moins restrictives qu'il a étudiées et les raisons pour lesquelles il les a rejetées.

#### Programme de soins

(2) Si aucun programme de soins à fournir à l'enfant à son congé du programme de traitement en milieu fermé n'est disponible au moment où l'ordonnance est rendue, l'administrateur doit, dans les 90 jours de la date de l'ordonnance, élaborer un tel programme et le déposer auprès du tribunal.

#### PROROGATION DU PLACEMENT

##### Prorogation

164 (1) Si un enfant fait l'objet d'une ordonnance rendue en vertu du paragraphe 161 (1) (placement) ou du paragraphe (5), l'une ou l'autre des personnes suivantes peut, avant l'expiration de la période de placement, demander, par voie de requête, que soit rendue une ordonnance de prorogation du placement de l'enfant dans le programme de traitement en milieu fermé :

a) une personne visée au paragraphe 158 (1), avec le consentement écrit de l'administrateur;

b) l'administrateur, avec le consentement écrit d'un parent ou, si l'enfant est confié à la garde légitime d'une société, le consentement de la société.

##### Idem

(2) Si une personne est gardée dans le programme de traitement en milieu fermé en vertu du paragraphe 162 (4) après avoir atteint l'âge de 18 ans, l'une ou l'autre des personnes suivantes peut, avant l'expiration de la période de placement, demander une seule fois, par voie de requête, que soit rendue une autre ordonnance de prorogation du placement de la personne en traitement dans le programme de traitement en milieu fermé :

a) la personne en traitement, avec le consentement écrit de l'administrateur;

b) un parent de la personne en traitement, avec le consentement écrit de cette personne et celui de l'administrateur;

c) un médecin, avec le consentement écrit de l'administrateur et de la personne en traitement;

d) l'administrateur, avec le consentement écrit de la personne en traitement.

#### Possibilité de garder la personne dans le programme en attendant la décision

(3) Si une requête est présentée en vertu du paragraphe (1) ou (2), la personne peut être gardée dans le programme de traitement en milieu fermé en attendant qu'une décision soit rendue au sujet de la requête.

#### Application des paragraphes 158 (3) et (6) à (9) et des articles 159 et 160

(4) Les paragraphes 158 (3), (6), (7), (8) et (9) (audience) et les articles 159 (renonciation aux témoignages oraux) et 160 (évaluation) s'appliquent, avec les adaptations nécessaires, à la requête présentée en vertu du paragraphe (1) ou (2).

- e) la société qui a la garde de l'enfant en application d'une ordonnance rendue sous le régime de la partie V (Protection de l'enfance);
- f) l'administrateur;
- g) dans le cas d'un enfant inuit, métis ou de Premières Nations, les personnes visées aux alinéas a), b), c), d), e) et f) et un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

#### Idem

- (5) Le tribunal peut faire en sorte qu'une copie du rapport soit donnée à un parent qui n'assiste pas à l'audience mais qui, selon le tribunal, s'intéresse activement aux délibérations.
- Non-divulgaration du rapport à l'enfant**
- (6) Le tribunal peut s'abstenir de divulguer tout ou partie du rapport à l'enfant s'il est convaincu que la divulgation de tout ou partie du rapport à l'enfant lui causerait des maux affectifs.
- Placement dans un programme de traitement en milieu fermé : critères**
- 161 (1) Le tribunal ne peut ordonner qu'un enfant soit placé dans un programme de traitement en milieu fermé que s'il est convaincu que les critères suivants sont remplis :

- a) l'enfant a un trouble mental;
- b) l'enfant, par suite de ce trouble mental, s'est infligé ou a tenté de s'infliger des lésions corporelles graves ou en a infligées ou a tenté d'en infliger à une autre personne au cours des 45 jours qui ont précédé l'un ou l'autre des événements suivants :

- (i) la présentation de la requête prévue au paragraphe 158 (1),
- (ii) sa détention ou sa garde sous le régime de la Loi sur le système de justice pénale pour les adolescents (Canada) ou de la Loi sur les infractions provinciales,
- (iii) son admission dans un établissement psychiatrique sous le régime de la Loi sur la santé mentale à titre de malade en cure obligatoire;

#### c) l'enfant :

- (i) soit au cours des 12 mois qui ont précédé la requête, mais lors d'une occasion différente de celle visée à l'alinéa b), s'est infligé ou a tenté de s'infliger des lésions corporelles graves, en a infligées ou a tenté d'en infliger à une autre personne, ou a sérieusement menacé, au moyen de paroles ou d'actes, de s'en infliger ou d'en infliger à une autre personne,
- (ii) soit a causé ou a tenté de causer la mort d'une personne lorsqu'il a commis ou tenté de commettre l'acte visé à l'alinéa b);

- d) le programme de traitement en milieu fermé permettrait efficacement d'empêcher que l'enfant s'inflige ou tente de s'infliger des lésions corporelles graves ou en inflige ou tente d'en infliger à une autre personne;
- e) un traitement qui convient au trouble mental de l'enfant est disponible au lieu du traitement en milieu fermé auquel se rapporte la requête;
- f) aucune méthode moins restrictive qui convient au traitement du trouble mental de l'enfant n'est appropriée dans les circonstances.

#### Enfant de moins de 12 ans

- (2) Le tribunal ne doit pas rendre l'ordonnance prévue au paragraphe (1) à l'égard d'un enfant de moins de 12 ans, sauf si le ministre consent au placement de l'enfant.

#### Exigence supplémentaire : médecin

- (3) Si le requérant est un médecin, le tribunal ne doit rendre l'ordonnance prévue au paragraphe (1) que s'il est convaincu que le requérant croit que les critères énoncés dans ce paragraphe sont remplis.
- Durée du placement**
- 162 (1) Le tribunal précise, dans l'ordonnance rendue en vertu du paragraphe 161 (1), la durée du placement de l'enfant, qui ne peut dépasser 180 jours, dans le programme de traitement en milieu fermé.

#### Cas où la société est le requérant

- (2) Si l'enfant est placé dans un programme de traitement en milieu fermé par suite d'une requête présentée par une société et que la durée du placement précisée dans l'ordonnance du tribunal dépasse 60 jours, l'enfant obtient son congé le jour qui suit le 60<sup>e</sup> jour de son admission au programme, à moins qu'avant ce jour, selon le cas :



## Ordonnance provisoire

(4) Si l'audition d'une requête est ajournée, le tribunal peut rendre une ordonnance provisoire de placement de l'enfant dans un programme de traitement en milieu fermé s'il est convaincu que l'enfant remplit les critères de placement énoncés aux alinéas 161 (1) a) à f) et, si l'enfant a moins de 12 ans, que le ministre consent à l'admission de l'enfant.

## Preuve en cas d'ajournement

(5) Pour l'application du paragraphe (4), le tribunal peut admettre une preuve qu'il estime crédible et digne de foi dans les circonstances et fonder sa décision sur cette preuve.

## Enfant représenté par un avocat

(6) Si une requête est présentée en vertu du paragraphe (1) à l'égard d'un enfant qui n'a pas d'avocat, le tribunal ordonne, aussitôt que possible et, en tout état de cause, avant l'audition de la requête, que les services d'un avocat soient fournis à l'enfant.

## Huis clos

(7) L'audience prévue au présent article est entendue à huis clos. Aucun représentant des médias n'a le droit d'y assister.

## Présence de l'enfant à l'audience

(8) L'enfant qui fait l'objet de la requête prévue au paragraphe (1) a le droit d'être présent à l'audience, sauf dans l'un ou l'autre des cas suivants :

a) le tribunal est convaincu que sa présence lui causerait des maux affectifs;

b) l'enfant, après avoir obtenu des conseils juridiques, consent par écrit à la tenue de l'audience en son absence.

## Présence de l'enfant exigée

(9) Le tribunal peut exiger que l'enfant qui a consenti à la tenue d'une audience en son absence en vertu de l'alinéa (8) b) assiste à tout ou partie de l'audience.

## Témoignages oraux

159 (1) Si une requête est présentée en vertu du paragraphe 158 (1), le tribunal tient une audience sur la question et entend des témoignages oraux, à moins que l'enfant, après avoir obtenu des conseils juridiques, ne consente par écrit à ce qu'une ordonnance soit rendue en vertu du paragraphe 161 (1) sans l'audition de témoignages oraux. Le consentement de l'enfant est alors déposé auprès du tribunal.

## Témoignages oraux malgré le consentement de l'enfant

(2) Le tribunal peut entendre des témoignages oraux même si l'enfant a donné le consentement prévu au paragraphe (1).

## Validité du consentement de l'enfant

(3) Le consentement que donne l'enfant en application du paragraphe (1) n'est valable que pour la période visée au paragraphe 162 (1) (durée du placement).

## Évaluation

160 (1) À tout moment après qu'une requête a été présentée en vertu du paragraphe 158 (1), le tribunal peut ordonner que l'enfant subisse, dans un délai déterminé, une évaluation devant une personne précisée qui, d'une part, possède, de l'avis du tribunal, les qualités requises pour procéder à une évaluation qui l'aidera à établir si l'enfant devrait être placé dans un programme de traitement en milieu fermé et, d'autre part, a accepté d'effectuer cette évaluation.

## Rapport

(2) La personne qui effectue une évaluation en application du paragraphe (1) présente, par écrit, son rapport d'évaluation au tribunal dans le délai précisé dans l'ordonnance. Ce délai ne doit pas dépasser 30 jours, sauf si le tribunal est d'avis qu'une période d'évaluation plus longue est nécessaire.

## Personnes ne pouvant effectuer une évaluation

(3) Le tribunal ne doit pas ordonner que l'évaluation soit effectuée par une personne qui fournit des services dans le cadre du programme de traitement en milieu fermé auquel se rapporte la requête.

## Copies du rapport

(4) Le tribunal fournit une copie du rapport aux personnes suivantes :

- a) le requérant;
- b) l'enfant, sous réserve du paragraphe (6);
- c) l'avocat de l'enfant;
- d) le parent qui comparait à l'audience;

## Admission d'enfants

(3) Aucun enfant ne doit être admis à un programme de traitement en milieu fermé si ce n'est en application d'une ordonnance du tribunal rendue en vertu soit de l'article 161 (placement dans un programme de traitement en milieu fermé), soit de l'article 168 (admission d'urgence).

### Locaux fermés à clé

156 Les locaux où est offert un programme de traitement en milieu fermé peuvent être fermés à clé afin d'y détenir des enfants.

### Utilisation de contentions mécaniques

157 (1) Sous réserve du paragraphe (3), l'administrateur peut utiliser des contentions mécaniques sur un enfant, et en autoriser l'utilisation, pour contrôler le comportement de l'enfant.

### Consentement non nécessaire

(2) L'administrateur n'est pas tenu d'obtenir le consentement de l'enfant, ou un consentement donné en son nom, avant d'utiliser des contentions mécaniques en vertu du présent article.

### Restrictions

(3) L'administrateur veille à ce que les contentions mécaniques ne soient utilisées sur un enfant placé dans un programme de traitement en milieu fermé que si les conditions suivantes sont réunies :

- a) elles sont utilisées conformément à la présente partie, aux politiques établies en application du paragraphe (4) et aux règlements;
- b) elles sont utilisées en cas d'urgence au titre du devoir de common law qu'a le fournisseur de soins de maîtriser ou de confiner une personne lorsqu'il est nécessaire de prendre des mesures immédiates pour éviter que cette personne subisse ou cause à autrui des lésions corporelles graves.

### Politique

(4) Le fournisseur de services agréé pour assurer la prestation d'un programme de traitement en milieu fermé doit :

- a) d'une part, établir une politique relative à l'utilisation de contentions mécaniques qui est conforme à la présente loi et aux règlements;
- b) d'autre part, veiller à ce que l'administrateur et les employés du programme se conforment à cette politique.

## PLACEMENT DANS UN PROGRAMME DE TRAITEMENT EN MILIEU FERMÉ

### Demande de placement d'un enfant

158 (1) L'une ou l'autre des personnes suivantes peut, avec le consentement écrit de l'administrateur, demander au tribunal, par voie de requête, d'ordonner le placement d'un enfant dans un programme de traitement en milieu fermé :

- 1. Si l'enfant a moins de 16 ans :
  - i. un parent de l'enfant,
  - ii. quiconque, à l'exception de l'administrateur, s'occupe de l'enfant, si un parent de l'enfant consent à la requête,
  - iii. la société qui a la garde de l'enfant en application d'une ordonnance rendue sous le régime de la partie V (Protection de l'enfance).
- 2. Si l'enfant a 16 ans ou plus :
  - i. l'enfant lui-même,
  - ii. un parent de l'enfant, si l'enfant consent à la requête,
  - iii. la société qui a la garde de l'enfant en application d'une ordonnance rendue sous le régime de la partie V (Protection de l'enfance).

### Délai prévu pour entendre la requête

(2) Si une requête est présentée en vertu du paragraphe (1), le tribunal examine la question dans les 10 jours suivant la date à laquelle a été rendue l'ordonnance prévue au paragraphe (6) (représentation par un avocat) ou, si une telle ordonnance n'a pas été rendue, dans les 10 jours suivant la présentation de la requête.

### Ajournerement

(3) Le tribunal peut ajourner l'audition d'une requête pendant au plus 30 jours, sauf si le requérant et l'enfant consentent à un ajournerement plus long.

b) maîtrisé au moyen de contentions mécaniques en guise de châtement.

#### Conditions d'utilisation

(2) Le responsable d'un lieu de garde en milieu fermé ou d'un lieu de détention provisoire en milieu fermé ne peut autoriser l'utilisation de contentions mécaniques sur un adolescent détenu dans un tel lieu que si toutes les conditions suivantes sont réunies :

i. La non-utilisation de contentions mécaniques entraînerait un risque imminent que, selon le cas :

i. l'adolescent ou une autre personne subisse un préjudice corporel,

ii. l'adolescent s'évade du lieu de garde en milieu fermé ou du lieu de détention provisoire en milieu fermé,

iii. l'adolescent cause de graves dommages matériels.

2. L'utilisation d'autres moyens que les contentions mécaniques ne permettrait pas ou n'a pas permis de réduire ou d'éliminer le risque visé à la disposition 1.

3. L'utilisation de contentions mécaniques est raisonnablement nécessaire pour réduire ou éliminer le risque visé à la disposition 1.

#### Exception : transport

(3) Malgré le paragraphe (2), des contentions mécaniques peuvent être utilisées sur un adolescent détenu dans un lieu de garde en milieu fermé ou un lieu de détention provisoire en milieu fermé lorsque cela est raisonnablement nécessaire pour assurer le transfert de l'adolescent soit dans un autre lieu de garde ou lieu de détention, soit vers le tribunal ou la collectivité, ou en provenance du tribunal ou de la collectivité.

### PARTIE VII MESURES EXTRAORDINAIRES

#### Définitions

154 Les définitions qui suivent s'appliquent à la présente partie.

«administrateur» Le responsable d'un programme de traitement en milieu fermé. («administrator»)

«pièce de désescalade sous clé» Pièce fermée à clé, agréée en vertu du paragraphe 170 (1) et utilisée pour la mise en oeuvre de mesures de désescalade face à des situations et à des comportements impliquant des enfants ou des adolescents. («secure de-escalation room»)

«programme de traitement en milieu fermé» Programme créé ou agréé par le ministre en vertu du paragraphe 155 (1). («secure treatment program»)

«psychotrope» Médicament ou combinaison de médicaments prescrits comme psychotropes. («psychotropic drug»)

«technique d'ingérence» S'entend des moyens suivants :

a) l'utilisation de contentions mécaniques;

b) une technique de stimulation aversive;

c) toute autre technique prescrite comme technique d'ingérence. («intrusive procedure»)

«trouble mental» Trouble important des processus affectifs, de la pensée ou de la cognition qui affaiblit grandement la capacité d'une personne de formuler des jugements raisonnés. («mental disorder»)

#### PROGRAMMES DE TRAITEMENT EN MILIEU FERMÉ

#### Programmes de traitement en milieu fermé

#### Création ou agrément de programmes par le ministre

155 (1) Le ministre peut :

a) soit mettre sur pied et faire fonctionner;

b) soit agréer,

des programmes pour le traitement d'enfants ayant des troubles mentaux et dans le cadre desquels la liberté des enfants est constamment restreinte.

#### Conditions

(2) Le ministre peut assortir l'agrément prévu au paragraphe (1) de conditions. Il peut également modifier les conditions fixées ou en imposer de nouvelles.



(4) Un juge de paix peut délivrer un mandat autorisant un agent de la paix ou le responsable d'un lieu de détention provisoire ou d'un lieu de garde en milieu ouvert, ou le délégué du responsable, à appréhender un adolescent qui est gardé dans le lieu en question s'il est convaincu, à la suite d'une dénonciation faite sous serment, qu'il existe des motifs raisonnables et probables de croire que cet adolescent :

- a) soit a quitté ce lieu sans le consentement du responsable et n'y retourne pas ou refuse d'y retourner;
- b) soit ne retourne pas ou refuse de retourner à un lieu de garde en milieu ouvert à la fin du congé de réinsertion sociale prévu à l'alinéa 147 b).

#### Pouvoir d'entrer dans un local

(5) Si une personne autorisée à appréhender un adolescent en vertu du paragraphe (1) ou (2) croit, en se fondant sur des motifs raisonnables et probables, qu'un adolescent vient se trouver dans un local, elle peut, même sans mandat, entrer dans ce local, en employant la force si cela est nécessaire, y rechercher l'adolescent et l'en retirer.

#### Conformité aux règlements

(6) La personne autorisée à entrer dans un local en vertu du paragraphe (5) exerce ce pouvoir conformément aux règlements.

#### Inspections et enquêtes

151 (1) Le ministre peut désigner une personne pour effectuer les inspections ou les enquêtes qu'il peut exiger dans le cadre de l'application de la présente partie.

#### Congédiement justifié pour entrave à une inspection

(2) La personne employée au ministère qui entrave une inspection ou une enquête ou qui soustrait, détruit ou dissimule des renseignements ou des choses exigés pour les fins d'une inspection ou d'une enquête, ou qui refuse de fournir ces renseignements ou choses, peut faire l'objet d'un congédiement justifié.

#### PERQUISITIONS OU FOUILLES

#### Perquisitions ou fouilles permises

152 (1) Le responsable d'un lieu de garde en milieu ouvert ou en milieu fermé ou d'un lieu de détention provisoire peut autoriser la perquisition ou la fouille, effectuée conformément aux règlements, de ce qui suit :

1. Le lieu de garde en milieu ouvert ou en milieu fermé ou le lieu de détention provisoire;
2. Un adolescent ou une autre personne se trouvant dans le lieu de garde en milieu ouvert ou en milieu fermé ou le lieu de détention provisoire;
3. Les biens d'un adolescent ou d'une autre personne se trouvant dans le lieu de garde en milieu ouvert ou en milieu fermé ou le lieu de détention provisoire;
4. Tout véhicule entrant ou se trouvant dans le lieu de garde en milieu ouvert ou en milieu fermé ou le lieu de détention provisoire.

#### Objets interdits

(2) Tout objet interdit trouvé lors d'une perquisition ou d'une fouille peut être saisi et il peut en être disposé conformément aux règlements.

#### Définition : objet interdit

(3) La définition qui suit s'applique au paragraphe (2).

«objet interdit» S'entend de ce qui suit :

- a) tout ce qu'un adolescent n'est pas autorisé à avoir en sa possession;
- b) tout ce qu'un adolescent est autorisé à avoir en sa possession, mais qui se trouve dans un endroit où l'adolescent n'est pas autorisé à l'avoir en sa possession;
- c) ~~tout ce qu'un adolescent est autorisé à avoir en sa possession, mais dont il possède une quantité non autorisée;~~
- d) tout ce qu'un adolescent est autorisé à avoir en sa possession, mais dont il fait un usage non autorisé.

#### CONTENTIONS MÉCANIQUES

#### Contentions mécaniques

#### Restrictions

153 (1) Le responsable d'un lieu de garde en milieu fermé ou d'un lieu de détention provisoire en milieu fermé veille à ce qu'aucun adolescent détenu dans un tel lieu ne soit :

- a) maîtrisé au moyen de contentions mécaniques, si ce n'est conformément au présent article et aux règlements;

- (c) son transfèrement d'un lieu de garde en milieu ouvert à un lieu de garde en milieu fermé en application du paragraphe 24.2 (9) de la *Loi sur les jeunes contrevenants* (Canada) conformément à l'article 88 de la *Loi sur le système de justice pénale pour les adolescents* (Canada).

#### **Délai de 30 jours**

- (2) La requête prévue au paragraphe (1) doit être présentée dans les 30 jours suivant la décision, le placement ou le transfèrement.

#### **Obligation de la Commission : révision**

- (3) La Commission doit réviser la requête présentée en vertu du paragraphe (1) et peut tenir une audience à cet effet.

#### **Tenue d'une audience**

- (4) Dans les 10 jours suivant la réception de la requête de l'adolescent, la Commission l'informe de son intention de tenir ou non une audience.

#### **Procédure**

- (5) La *Loi sur l'exercice des compétences légales* ne s'applique pas à l'audience tenue en vertu du paragraphe (3).

#### **Révision : délai prévu**

- (6) La Commission termine sa révision et rend une décision dans les 30 jours suivant la réception de la requête de l'adolescent, sauf si :

- a) d'une part, elle tient une audience relativement à la requête;
- b) d'autre part, l'adolescent et le directeur provincial dont la décision fait l'objet de la révision consentent à ce que la Commission dispose d'un délai plus long pour rendre sa décision.

#### **Recommandations de la Commission**

- (7) Après avoir révisé une requête conformément au paragraphe (3), la Commission peut prendre l'une ou l'autre des mesures suivantes :

- a) recommander au directeur provincial que, selon le cas :
  - (i) l'adolescent soit transféré dans un autre lieu, si elle est d'avis que le lieu où l'adolescent est gardé ou celui où il a été transféré ne répond pas à ses besoins,
  - (ii) le congé de réinsertion sociale de l'adolescent soit autorisé en vertu de l'article 91 de la *Loi sur le système de justice pénale pour les adolescents* (Canada),
  - (iii) l'adolescent soit renvoyé à un lieu de garde en milieu ouvert, s'il a été transféré comme le prévoit l'alinéa (1) c);
  - b) confirmer la décision, le placement ou le transfèrement.

#### **APPRÉHENSION D'ADOLESCENTS QUI S'ABSENTENT D'UN LIEU DE GARDE SANS PERMISSION**

##### **Appréhension**

##### **Appréhension d'un adolescent qui s'absente d'un lieu de détention provisoire**

- 150 (1) L'agent de la paix ou le responsable d'un lieu de détention provisoire, ou le délégué du responsable, qui croit, en se fondant sur des motifs raisonnables et probables, qu'un adolescent détenu en application de la *Loi sur le système de justice pénale pour les adolescents* (Canada) ou de la *Loi sur les infractions provinciales* dans un lieu de détention provisoire a quitté ce lieu sans le consentement du responsable et n'y retourne pas ou refuse d'y retourner peut appréhender l'adolescent, même sans mandat, et l'amener dans un lieu de détention provisoire ou prendre des mesures à cet effet.

##### **Appréhension d'un adolescent qui s'absente d'un lieu de garde en milieu ouvert**

- (2) L'agent de la paix ou le responsable d'un lieu de garde en milieu ouvert, ou le délégué du responsable, peut appréhender, même sans mandat, l'adolescent qui est gardé dans un lieu de garde en milieu ouvert comme le précise l'article 147 et l'amener dans un lieu de garde en milieu ouvert ou un lieu de détention provisoire, ou prendre des mesures à cet effet, s'il croit, en se fondant sur des motifs raisonnables et probables, que l'adolescent :

- a) soit a quitté le lieu sans le consentement du responsable et n'y retourne pas ou refuse d'y retourner;
- b) soit ne retourne pas ou refuse de retourner au lieu de garde en milieu ouvert à la fin du congé de réinsertion sociale prévu à l'alinéa 147 b).

##### **Renvoi de l'adolescent dans les 48 heures**

- (3) L'adolescent qui est appréhendé en vertu du présent article est renvoyé au lieu d'où il est absent dans les 48 heures de son appréhension, à moins que le directeur provincial ne le détienne dans un lieu de détention provisoire en milieu fermé en vertu de la disposition 2 du paragraphe 145 (2).

## Garde en milieu ouvert pour les infractions provinciales

- (2) Si un adolescent est condamné à une peine d'emprisonnement en application de la *Loi sur les infractions provinciales* :
- a) la peine d'emprisonnement est purgée dans un lieu de garde en milieu ouvert, sous réserve des paragraphes (3) et (4);
- b) l'article 91 (congé de réinsertion sociale) de la *Loi sur le système pénale pour les adolescents* (Canada) s'applique avec les adaptations nécessaires;
- c) les articles 28 (réduction de peine) et 28.1 (décision concernant la réduction de peine) et la partie III (Commission ontarienne des libérations conditionnelles et des mises en liberté méritées) de la *Loi sur le ministère des Services correctionnels* s'appliquent avec les adaptations nécessaires.

## Transfertement dans un lieu de garde en milieu fermé

- (3) Le directeur provincial peut transférer l'adolescent placé dans un lieu de garde en milieu ouvert en application de l'alinéa (2) a) dans un lieu de garde en milieu fermé s'il est d'avis que le transfertement de l'adolescent est nécessaire pour assurer la sécurité de l'adolescent ou celle d'autres personnes se trouvant dans le lieu de garde en milieu ouvert.
- (4) Si l'adolescent placé sous garde en application de la *Loi sur le système de justice pénale pour les adolescents* (Canada) est condamné en même temps à une peine d'emprisonnement en application de la *Loi sur les infractions provinciales*, cette deuxième peine est purgée dans le même lieu que la première.

## Adolescents en milieu ouvert

- 147 Si un adolescent est condamné en application de l'alinéa 75 d) de la *Loi sur les infractions provinciales* à une peine d'emprisonnement en milieu ouvert, tel que le précise l'article 103 de cette loi, parce qu'il n'a pas respecté les conditions de l'ordonnance de probation :
- a) il est gardé dans le lieu de garde en milieu ouvert que précise le directeur provincial;
- b) l'article 91 (congé de réinsertion sociale) de la *Loi sur le système de justice pénale pour les adolescents* (Canada) s'applique avec les adaptations nécessaires.

## COMMISSION DE RÉVISION DES PLACEMENTS SOUS GARDE

### Commission de révision des placements sous garde

- 148 (1) La Commission de révision des placements sous garde est prorogée sous le nom de Commission de révision des placements sous garde en français et de Custody Review Board en anglais. Elle exerce les pouvoirs et fonctions que lui attribuent la présente partie et les règlements.

### Membres

- (2) La Commission se compose du nombre prescrit de membres nommés par le lieutenant-gouverneur en conseil.

### Président et vice-présidents

- (3) Le lieutenant-gouverneur en conseil peut nommer un membre de la Commission à la présidence et un ou plusieurs membres à la vice-présidence.

### Quorum

- (4) Le nombre prescrit de membres de la Commission constitue le quorum.

### Rémunération

- (5) Le président, les vice-présidents et les autres membres de la Commission touchent la rémunération que fixe le lieutenant-gouverneur en conseil. Ils ont le droit d'être remboursés des frais de déplacement et de subsistance raisonnables et nécessaires qu'ils engagent lorsqu'ils assistent aux réunions de la Commission ou participent d'une autre façon à ses travaux.

### Fonctions de la Commission

- (6) La Commission effectue les révisions demandées en application de l'article 149 et exerce les fonctions que lui attribuent les règlements.

### Requête présentée à la Commission

- 149 (1) L'adolescent peut, par voie de requête, demander à la Commission de réviser :

- a) le lieu particulier où il est gardé ou a été transféré;
- b) le refus du directeur provincial d'autoriser le congé de réinsertion sociale prévu à l'article 91 de la *Loi sur le système de justice pénale pour les adolescents* (Canada);



1. L'adolescent est accusé d'une infraction qui rendrait un adulte passible d'un emprisonnement d'au moins cinq ans et, selon le cas :

- i. l'infraction comprend le fait d'avoir infligé ou tenté d'infliger des lésions corporelles graves à une autre personne,
- ii. il n'a pas comparu devant le tribunal lorsqu'il était tenu de le faire en application de la *Loi sur le système de justice pénale pour les adolescents* (Canada) ou il s'est évadé ou a tenté de s'évader lorsqu'il était détenu légalement,
- iii. il a été reconnu coupable, au cours des 12 mois précédant l'infraction faisant l'objet de l'accusation visée, d'une infraction qui rendrait un adulte passible d'un emprisonnement d'au moins cinq ans.

2. L'adolescent est détenu dans un lieu de détention provisoire et le quitte ou tente de le quitter sans le consentement du responsable, ou est accusé soit de s'être évadé ou d'avoir tenté de s'évader lorsqu'il était détenu légalement, soit d'être illégalement en liberté en contravention au *Code criminel* (Canada).

3. Le directeur provincial est convaincu que, compte tenu de toutes les circonstances, y compris toute probabilité marquée que l'adolescent commettra une infraction criminelle ou entravera l'administration de la justice s'il est placé dans un lieu de détention provisoire en milieu ouvert, il est nécessaire de détenir l'adolescent dans un lieu de détention provisoire en milieu fermé pour assurer, selon le cas :

- i. sa comparution devant le tribunal,
- ii. la protection et la sécurité du public,
- iii. la sécurité du lieu de détention provisoire.

#### **Détention jusqu'au renvoi à un lieu de garde en milieu fermé**

- (3) Malgré le paragraphe (1), l'adolescent appréhendé parce qu'il a quitté un lieu de garde en milieu fermé ou qu'il n'y est pas retourné peut être détenu dans un lieu de détention provisoire en milieu fermé jusqu'à son renvoi au premier lieu de garde.

#### **Détention jusqu'à la prise d'une décision**

- (4) Malgré le paragraphe (1), l'adolescent détenu en application de la *Loi sur le système de justice pénale pour les adolescents* (Canada) dans un lieu de détention provisoire peut être détenu dans un lieu de détention provisoire en milieu fermé durant au plus 24 heures pendant que le directeur provincial prend la décision prévue au paragraphe (2).

#### **Révision du niveau de détention**

- (5) L'adolescent détenu dans un lieu de détention provisoire en milieu fermé et amené devant le tribunal pour adolescents pour révision d'une ordonnance de détention rendue en vertu de la *Loi sur le système de justice pénale pour les adolescents* (Canada) ou du *Code criminel* (Canada) peut demander au tribunal de réviser le niveau de sa détention.

#### **Pouvoirs du tribunal pour adolescents**

- (6) Le tribunal pour adolescents qui effectue la révision d'une ordonnance de détention peut soit confirmer la décision que le directeur provincial a prise en vertu du paragraphe (2), soit ordonner que l'adolescent soit transféré dans un lieu de détention provisoire en milieu ouvert.

#### **Retour de l'adolescent dans un lieu de détention provisoire en milieu fermé**

- (7) Le directeur provincial peut présenter au tribunal pour adolescents une requête en révision de l'ordonnance de transfertement d'un adolescent dans un lieu de détention provisoire en milieu ouvert en vertu du paragraphe (6) si le retour de l'adolescent dans un lieu de détention provisoire est nécessaire pour l'un ou l'autre des motifs suivants :

1. Un changement important de circonstances.
2. Un autre motif que le directeur provincial juge approprié.

#### **Pouvoirs du tribunal pour adolescents**

- (8) Le tribunal pour adolescents qui effectue la révision d'une ordonnance de transfertement d'un adolescent dans un lieu de détention provisoire en milieu ouvert peut soit confirmer la décision qu'il a prise en vertu du paragraphe (6), soit ordonner que l'adolescent soit transféré dans un lieu de détention provisoire en milieu fermé.

#### **GARDE**

#### **Détention sous le régime de la Loi sur les infractions provinciales**

##### **Détention préalable au procès**

- 146 (1) Si une ordonnance de détention sous garde est rendue en vertu du paragraphe 150 (4) (ordonnance de détention) ou 151 (2) (autres ordonnances) de la *Loi sur les infractions provinciales*, l'adolescent est détenu dans un lieu de détention provisoire.

**Lieux fermés à clé**

(4) Les lieux de garde en milieu fermé et les lieux de détention provisoire en milieu fermé peuvent être fermés à clé afin de servir à la détention des adolescents.

**Nominations par le ministre**

143 (1) Le ministre peut nommer une personne ou une catégorie de personnes en qualité :

a) de directeur provincial, pour exercer tout ou partie des fonctions d'un directeur provincial en application de :

(i) la Loi sur le système de justice pénale pour les adolescents (Canada),

(ii) la présente loi et des règlements;

b) d'agent de probation, pour exercer tout ou partie des fonctions :

(i) d'un délégué à la jeunesse en application de la Loi sur le système de justice pénale pour les adolescents (Canada),

(ii) d'un agent de probation afin de s'occuper d'adolescents en application de la Loi sur les infractions provinciales;

(iii) d'un agent de probation aux fins liées aux adolescents en application de la Loi sur les infractions provinciales;

(iv) d'un agent de probation en application de la présente loi et des règlements;

(c) d'huissier, pour exercer tout ou partie des fonctions d'un huissier en application des règlements.

**Nominations : conditions ou restrictions**

(2) Le ministre peut assortir la nomination prévue au paragraphe (1) de conditions ou de restrictions.

**Agent de probation et huissier : pouvoirs d'un agent de la paix**

(3) L'agent de probation nommé en vertu de l'alinéa (1) b) et l'huissier nommé en vertu de l'alinéa (1) c) possèdent, dans l'exercice de leurs fonctions, les pouvoirs d'un agent de la paix.

**Désignation d'agents de la paix**

(4) Le ministre peut désigner par écrit :

a) soit une personne employée au ministère ou employée dans un lieu de garde en milieu ouvert ou en milieu fermé, ou dans un lieu de détention provisoire, pour agir en qualité d'agent de la paix dans l'exercice de ses fonctions;

b) soit une catégorie de personnes, parmi celles visées à l'alinéa a), pour agir en qualité d'agents de la paix dans l'exercice de leurs fonctions.

**Désignations : conditions ou restrictions**

(5) Le ministre peut assortir la désignation prévue au paragraphe (4) de conditions ou de restrictions.

**Rémunération et indemnités**

(6) Le ministre fixe la rémunération et les indemnités de la personne nommée en vertu du paragraphe (1) qui n'est pas un fonctionnaire employé sous le régime de la partie III de la Loi de 2006 sur la fonction publique de l'Ontario. Ces sommes sont prélevées sur les affectations budgétaires de la Législature.

**Rapports et renseignements**

144 Le responsable d'un lieu de détention provisoire ou d'un lieu de garde en milieu ouvert ou en milieu fermé, l'huissier et l'agent de probation :

a) présentent au ministre les rapports prescrits et lui fournissent les renseignements prescrits, sous la forme prescrite et aux intervalles prescrits;

b) présentent un rapport au ministre et lui fournissent des renseignements, lorsque le ministre en fait la demande.

**DÉTENTION PROVISOIRE**

**Détention provisoire en milieu ouvert ou en milieu fermé**

**Détention provisoire en milieu ouvert, sauf exception**

145 (1) L'adolescent détenu en application de la Loi sur le système de justice pénale pour les adolescents (Canada) dans un lieu de détention provisoire est détenu dans un lieu de détention provisoire en milieu ouvert, sauf si le directeur provincial établit, en vertu du paragraphe (2), que l'adolescent doit être détenu dans un lieu de détention provisoire en milieu fermé.

**Détention provisoire en milieu fermé**

(2) Le directeur provincial peut détenu un adolescent dans un lieu de détention provisoire en milieu fermé s'il est convaincu que cette mesure est nécessaire pour l'un ou l'autre des motifs suivants :

g) l'article 136 (placement non autorisé);

h) un alinéa de l'article 137 (ingérence dans la vie de l'enfant, etc.);

i) l'alinéa 138 a) ou b) (faux renseignements, entrave);

et l'administrateur, le dirigeant ou l'employé d'une personne morale qui autorise ou permet cette contravention ou y participe sont coupables d'une infraction et passibles, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$ et d'un emprisonnement d'au plus un an, ou d'une seule de ces peines.

#### **Infraction : mauvais traitements infligés à un enfant**

(2) Quiconque contrevient au paragraphe 133 (2) (mauvais traitements infligés à un enfant) et l'administrateur, le dirigeant ou l'employé d'une personne morale qui autorise ou permet cette contravention ou y participe sont coupables d'une infraction et passibles, sur déclaration de culpabilité, d'une amende d'au plus 5 000 \$ et d'un emprisonnement d'au plus deux ans, ou d'une seule de ces peines.

#### **Infraction : publication**

(3) Quiconque contrevient au paragraphe 85 (8) ou 131 (11) (publication de renseignements identificateurs) ou à une ordonnance de non-publication rendue en vertu de l'alinéa 85 (7) c) ou du paragraphe 85 (9) et l'administrateur, le dirigeant ou l'employé d'une personne morale qui autorise ou permet cette contravention ou y participe sont coupables d'une infraction et passibles, sur déclaration de culpabilité, d'une amende d'au plus 10 000 \$ et d'un emprisonnement d'au plus trois ans, ou d'une seule de ces peines.

#### **Injonction**

140 (1) La Cour supérieure de justice peut, sur présentation d'une requête par la société, accorder une injonction pour empêcher quelqu'un de contrevenir à l'article 137.

#### **Modification**

(2) La Cour peut, sur présentation d'une requête par une personne, modifier ou révoquer l'ordonnance visée au paragraphe (1).

#### **Définitions**

141 Les définitions qui suivent s'appliquent à la présente partie.

«agent de probation» S'entend :

a) soit de la personne que le lieutenant-gouverneur en conseil ou son délégué nomme ou désigne pour exercer les fonctions d'un délégué à la jeunesse au sens de la *Loi sur le système de justice pénale pour les adolescents* (Canada);

b) soit de l'agent de probation nommé en vertu de l'alinéa 143 (1) b), («probation officer»)

«Commission» La Commission de révision des placements sous garde prorogée en application du paragraphe 148 (1).

(«Board»)

«huissier» Huissier nommé en vertu de l'alinéa 143 (1) c), («bailiff»)

#### **PROGRAMMES ET AGENTS**

#### **Programmes**

#### **Programmes de détention provisoire en milieu ouvert et en milieu fermé**

142 (1) Le ministre peut mettre sur pied les programmes suivants dans des lieux de détention provisoire :

1. Des programmes de détention provisoire en milieu fermé dans le cadre desquels la liberté des adolescents est constamment restreinte au moyen de barrières matérielles, d'une surveillance étroite par le personnel ou d'un accès limité à la collectivité;

2. Des programmes de détention provisoire en milieu ouvert dans le cadre desquels sont imposées des restrictions moins sévères que celles applicables aux programmes de détention provisoire en milieu fermé.

#### **Programmes de garde en milieu fermé**

(2) Le ministre peut mettre sur pied des programmes de garde en milieu fermé dans des lieux de garde en milieu fermé.

#### **Programmes de garde en milieu ouvert**

(3) Le ministre peut mettre sur pied des programmes de garde en milieu ouvert dans des lieux de garde en milieu ouvert.



- (5) Si une requête est présentée en vertu du paragraphe (4), le tribunal peut, dans l'intérêt véritable de l'enfant :
- soit proroger l'ordonnance pour la période où il estime être dans l'intérêt véritable de l'enfant, dans le cas de l'ordonnance visée à l'alinéa (3) a);
  - soit modifier ou révoquer l'ordonnance.
- Enfant confié aux soins d'une société : interdiction prévue**
- Si l'enfant est confié aux soins d'une société et qu'une ordonnance rendue en vertu du paragraphe (1) interdisant à une personne de visiter l'enfant est en vigueur, la société ne doit pas confier de nouveau l'enfant aux soins :
  - soit de la personne nommée dans l'ordonnance;
  - soit d'une personne qui peut autoriser la personne nommée dans l'ordonnance à visiter l'enfant.
- Réclamation juridique : recouvrement en raison de mauvais traitements**
- 135 (1) La définition qui suit s'applique au présent article.
- «subir des mauvais traitements» Relativement à un enfant, le fait d'avoir besoin de protection au sens de l'alinéa 73 (2) a), c), e), f), g) ou j).
- Recouvrement de dommages-intérêts au nom de l'enfant**
- Si l'avocat des enfants est d'avis, d'une part, qu'un enfant possède un droit d'action ou un autre droit en recouvrement de dommages-intérêts ou d'une autre indemnisation parce qu'il a subi des mauvais traitements et, d'autre part, qu'il serait dans l'intérêt véritable de l'enfant d'engager des poursuites, l'avocat des enfants peut engager et mener ces poursuites au nom de l'enfant.
- Recouvrement par une société**
- Si l'enfant est confié aux soins et à la garde d'une société, le paragraphe (2) s'applique également à la société avec les adaptations nécessaires.
- Interdiction**
- 136 Nul ne doit confier un enfant aux soins et à la garde d'une société et nulle société ne doit prendre soin d'un enfant ou en avoir la garde, si ce n'est conformément à la présente partie.
- Infractions : ingérence dans la vie d'un enfant confié aux soins ou à la surveillance d'une société**
- 137 Si un enfant fait l'objet d'une ordonnance de surveillance par la société ou d'une ordonnance ayant pour effet de le confier aux soins d'une société de façon provisoire ou prolongée rendue en vertu de la disposition 1, 2 ou 3 du paragraphe 98 (1) ou de l'alinéa 133 (1) a) ou c), nul ne doit :
- inciter ou tenter d'inciter l'enfant à se soustraire aux soins de la personne auprès de qui il est placé par le tribunal ou la société, selon le cas;
  - détenir ou héberger l'enfant après que la société visée à l'alinéa a) demande qu'il lui soit rendu;
  - s'ingérer dans la vie de l'enfant ou le soustraire ou tenter de le soustraire d'un endroit;
  - rendre visite à la personne visée à l'alinéa a) ou communiquer avec elle dans le but de s'ingérer dans la vie de l'enfant.
- Infractions : faux renseignements et entrave**
- 138 Nul ne doit :
- donner sciemment de faux renseignements dans le cadre d'une requête visée à la présente partie;
  - entraver ou tenter d'entraver les activités d'un préposé à la protection de l'enfance ou d'un agent de la paix qui agit en vertu de l'article 80, 81, 82, 83 ou 84, ni s'ingérer ou tenter de s'ingérer dans ses activités.
- Autres infractions**
- 139 (1) Quiconque contrevient à ce qui suit :
- une ordonnance de visite rendue en vertu du paragraphe 101 (1);
  - le paragraphe 127 (6) (divulgaration de renseignements);
  - le paragraphe 130 (6) ou (10) (caractère confidentiel du registre des mauvais traitements infligés aux enfants);
  - une ordonnance rendue en vertu du paragraphe 131 (8) (modification des dossiers de la société);
  - le paragraphe 133 (3) ou (4) (fait de laisser un enfant sans soins, etc.);
  - une ordonnance de ne pas faire rendue en vertu du paragraphe 134 (1);

## Enfant qui flâne dans un endroit public

(4) Le parent d'un enfant de moins de 16 ans ne doit pas lui permettre :

- a) soit de flâner dans un endroit public entre 0 h et 6 h;
- b) soit de se trouver dans un lieu de divertissement public entre 0 h et 6 h, à moins de l'accompagner.

## Agent de la paix

(3) Si un enfant qui a réellement ou apparemment moins de 16 ans se trouve dans un lieu où le public a accès, entre 0 h et 6 h, sans être accompagné d'une personne décrite à l'alinéa (1) b), un agent de la paix peut l'appréhender sans mandat et procéder comme si l'enfant avait été appréhendé en vertu du paragraphe 82 (1).

## Pouvoir d'un agent de la paix

(5) Si un enfant qui a réellement ou apparemment moins de 16 ans se trouve dans un lieu où le public a accès, entre 0 h et 6 h, sans être accompagné d'une personne décrite à l'alinéa (4) b), un agent de la paix peut l'amener dans un lieu sûr sans mandat et procéder comme si l'enfant avait été amené dans un lieu sûr en vertu du paragraphe 82 (1).

## Audience relative à la protection de l'enfant

(6) Le tribunal peut, relativement à un cas visé au paragraphe (2), (3) ou (4), instruire l'affaire sous le régime de la présente partie comme si une requête avait été présentée en vertu du paragraphe 80 (1) (instance portant sur la protection de l'enfant) à l'égard de l'enfant.

## Ordonnance de ne pas faire

134 (1) Au lieu de rendre une ordonnance en vertu du paragraphe 98 (1) ou de l'article 113 ou en plus de rendre l'une ou l'autre de ces deux ordonnances ou l'ordonnance provisoire visée au paragraphe 91 (2), le tribunal peut rendre une ou plusieurs des ordonnances suivantes dans l'intérêt véritable de l'enfant :

1. Une ordonnance pour empêcher une personne de visiter l'enfant ou d'avoir des contacts avec lui, ou pour le lui interdire, assortie des directives qu'il juge appropriées pour son application et la protection de l'enfant.
2. Une ordonnance pour empêcher une personne d'avoir des contacts avec la personne qui a la garde légitime de l'enfant à la suite d'une ordonnance provisoire rendue en vertu du paragraphe 91 (2) ou d'une ordonnance rendue en vertu du paragraphe 98 (1) ou de l'alinéa 113 (1) a) ou b), ou pour le lui interdire.

## Avis

(2) Une ordonnance ne doit être rendue en vertu du paragraphe (1) que si un avis d'instance a été signifié à personne à la partie dont le nom figure dans l'ordonnance.

## Durée de l'ordonnance

(3) L'ordonnance rendue en vertu du paragraphe (1) demeure en vigueur pour la période que le tribunal estime être dans l'intérêt véritable de l'enfant et :

- a) si elle est rendue en plus d'une ordonnance provisoire rendue en vertu du paragraphe 91 (2) ou d'une ordonnance rendue en vertu du paragraphe 98 (1) ou de l'alinéa 113 (1) a), b) ou c), elle peut prévoir qu'elle demeure en vigueur, sauf si le tribunal la modifie, la proroge ou la révoque, tant que cette autre ordonnance demeure en vigueur;
- b) si elle est rendue au lieu d'une ordonnance rendue en vertu du paragraphe 98 (1) ou de l'alinéa 113 (1) a), b) ou c) ou en plus d'une ordonnance rendue en vertu de l'alinéa 113 (1) d), elle peut prévoir qu'elle demeure en vigueur jusqu'à ce que le tribunal la modifie ou la révoque.

## Requête en prorogation, modification ou révocation de l'ordonnance

(4) Les personnes suivantes peuvent demander, par voie de requête, la prorogation, la modification ou la révocation d'une ordonnance rendue en vertu du paragraphe (1) :

- a) la personne qui en fait l'objet;
- b) l'enfant;
- c) la personne responsable de l'enfant;
- d) la société;
- e) le directeur;
- f) dans le cas d'un enfant inuit, métis ou de Premières Nations, la personne visée à l'alinéa a), b), c), d) ou e) ou le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

## Décision du directeur

(8) Si, après avoir tenu l'audience, le directeur décide que les renseignements qui figurent au registre relativement à la personne inscrite ne devraient pas y figurer ou sont erronés, il retire le nom de la personne du registre ou apporte toute autre modification nécessaire. Il peut ordonner que les dossiers de la société soient modifiés de manière à tenir compte de cette décision.

## Appel devant la Cour divisionnaire

(9) Une partie à l'audience peut interjeter appel de la décision du directeur devant la Cour divisionnaire.

## Huis clos

(10) L'audience et l'appel prévus au présent article sont entendus à huis clos. Aucun représentant des médias n'a le droit d'y assister.

## Publication

(11) Nul ne doit publier, ni rendre publics des renseignements ayant pour effet d'identifier un témoin, une personne qui prend part à l'audience ou une partie à l'audience autre que la société.

## Inadmissibilité en preuve du procès-verbal : exception

(12) Le procès-verbal de l'audience ou de l'appel visé au présent article n'est pas admissible en preuve dans une autre instance, à l'exception d'une instance introduite en vertu de l'alinéa 139 (1) c) (caractère confidentiel du registre des mauvais traitements infligés aux enfants) ou de l'alinéa 139 (1) d) (modification des dossiers de la société).

## POUVOIRS DU DIRECTEUR

### Pouvoir de transférer l'enfant

132 (1) Dans l'intérêt véritable de l'enfant confié aux soins ou à la surveillance d'une société, le directeur peut ordonner :

- a) soit qu'il soit confié aux soins ou à la surveillance d'une autre société;
- b) soit qu'il fasse l'objet d'un autre placement désigné par le directeur.

### Facteurs

(2) Lorsqu'il décide s'il y a lieu ou non de placer l'enfant ailleurs en vertu de l'alinéa (1) b), le directeur tient compte des facteurs suivants :

- a) le laps de temps que l'enfant a passé dans le placement en cours;

- b) l'opinion des parents de famille d'accueil;

- c) l'opinion et les désirs de l'enfant, qui doivent être dûment pris en considération eu égard à son âge et à son degré de maturité.

INFRACTIONS, ORDONNANCES DE NE PAS FAIRE, RECOUVREMENT AU NOM DE L'ENFANT ET INJONCTIONS

### Mauvais traitements : omission de prendre des mesures convenables

#### Définition

133 (1) La définition qui suit s'applique au présent article.

«mauvais traitements» S'entend des maux physiques, des mauvais traitements d'ordre sexuel ou de l'exploitation sexuelle dont une personne est victime.

### Mauvais traitements

(2) La personne responsable d'un enfant ne doit pas, selon le cas :

- a) lui infliger des mauvais traitements;

- b) du fait qu'elle ne subvient pas aux besoins de l'enfant ou qu'elle ne le surveille pas et ne le protège pas convenablement :

- (i) soit permettre que l'enfant subisse des mauvais traitements,

- (ii) soit permettre que l'enfant souffre d'un état mental ou affectif ou d'un trouble de développement qui risque, s'il n'y est pas remédié, de porter gravement atteinte à son développement.

### Fait de laisser l'enfant sans soins

(3) La personne responsable d'un enfant de moins de 16 ans ne doit pas le laisser sans avoir pris des mesures raisonnables, dans les circonstances, pour assurer sa surveillance et la prestation de soins.



**Médecin**

(12) Un médecin dûment qualifié peut, avec l'approbation écrite du directeur, examiner les renseignements figurant au registre que précise le directeur.

**Modification apportée au registre**

(13) Le directeur ou un employé au ministère qui agit sur les directives du directeur :

- a) doit retrancher un nom du registre ou apporter une autre modification au registre si les règlements exigent cette mesure;

b) peut modifier le registre pour corriger une erreur.

**Inadmissibilité du registre en preuve : exceptions**

(14) Le registre n'est pas admissible en preuve dans une instance, sauf :

- a) pour prouver qu'il y a conformité ou non au présent article;

b) lors d'une audience tenue ou d'un appel interjeté en vertu de l'article 131;

c) dans une instance introduite sous le régime de la *Loi sur les coroners*;

d) dans une instance visée à l'article 135.

**Audience : personne inscrite****Définition**

131 (1) La définition qui suit s'applique au présent article.

«audience» S'entend d'une audience tenue en vertu de l'alinéa (4) b).

**Avis à la personne inscrite**

(2) Si une inscription est faite au registre, le directeur avise par écrit dès que possible chaque personne inscrite visée par l'inscription de ce qui suit :

a) elle est identifiée dans le registre;

b) elle-même ou son avocat ou son mandataire a le droit d'examiner les renseignements figurant au registre qui la concernent ou qui l'identifient;

c) elle a le droit de demander au directeur de retirer son nom du registre ou d'y apporter une autre modification.

**Demande de modification**

(3) La personne inscrite qui reçoit l'avis prévu au paragraphe (2) peut demander au directeur de retirer son nom du registre ou d'y apporter une autre modification.

**Réponse du directeur**

(4) Sur réception de la demande prévue au paragraphe (3), le directeur peut :

a) soit y donner suite;

b) soit tenir une audience, après avoir donné un préavis écrit de 10 jours aux parties, pour décider s'il donne suite ou non à la demande.

**Délégation de pouvoir**

(5) Le directeur peut autoriser une autre personne à tenir l'audience et à exercer les pouvoirs et fonctions du directeur prévus au paragraphe (8).

**Procédure**

(6) La *Loi sur l'exercice des compétences légales* s'applique à l'audience. L'audience est tenue conformément aux règles de pratique et de procédure prescrites.

**Audience**

(7) Sont parties à l'audience :

a) la personne inscrite;

b) la société qui a vérifié les renseignements qui se rapportent à la personne inscrite ou qui l'identifient;

c) toute autre personne que précise le directeur.

- b) de l'enfant qui fait l'objet d'un rapport, («registered person»)  
«registre» Le registre tenu en application du paragraphe (5). («register»)

#### Directeur

- (2) Pour l'application du présent article, le ministre peut nommer au poste de directeur un employé au ministère.

#### Obligation de la société

- (3) La société qui reçoit, en application de l'article 122, un rapport selon lequel un enfant, y compris un enfant confié à ses soins, subit, peut subir ou peut avoir subi des mauvais traitements, vérifie de la manière prévue par le directeur. La société qui effectue la vérification en fait rapport au directeur sous la forme prescrite dès que possible.

#### Immunité

- (4) Sont irrecevables les actions ou autres instances en dommages-intérêts introduites contre un dirigeant ou un employé de la société, qui agit de bonne foi, pour un acte accompli dans l'exercice effectif ou censé tel d'une obligation imposée à la société en application du paragraphe (3) ou pour une négligence ou un manquement qu'il aurait commis dans l'exercice de cette obligation.

#### Contenu du registre

- (5) Le directeur tient un registre de la manière prescrite et y consigne les renseignements qui lui sont fournis en vertu du paragraphe (3). Le registre ne doit contenir aucun renseignement ayant pour effet d'identifier la personne qui a fourni les renseignements à une société en application du paragraphe 122 (1) ou (2) et qui ne fait pas l'objet du rapport.

#### Caractère confidentiel des renseignements

- (6) Malgré la partie X (Renseignements personnels) et toute autre loi, nul ne doit examiner, retrancher, modifier ou divulguer des renseignements qu'il a obtenus du registre, ni permettre ces actes, sauf dans la mesure autorisée par le présent article.

#### Enquête du coroner

- (7) Les personnes suivantes peuvent examiner, retrancher et divulguer des renseignements qui figurent au registre conformément aux pouvoirs dont elles sont investies :

1. Un coroner ou un médecin dûment qualifié, ou un agent de la paix muni d'une autorisation écrite d'un coroner, qui agit dans le cadre d'une enquête visée à la *Loi sur les coroners*.
  2. L'avocat des enfants ou son mandataire autorisé.
- (8) Le ministre ou le directeur peut permettre aux personnes suivantes d'examiner et de retrancher des renseignements qui figurent au registre et de les divulguer à une personne visée au paragraphe (7) ou à une autre personne visée au présent paragraphe, sous réserve des conditions que le directeur peut imposer :

1. Une personne employée :
  - i. au ministère,
  - ii. par une société,
  - iii. par un organisme chargé du bien-être des enfants situé hors de l'Ontario.
2. Une personne qui fournit ou propose de fournir du counseling ou un traitement à une personne inscrite.

#### Divuligation par le ministre ou le directeur

- (9) Le ministre ou le directeur peut divulguer des renseignements qui figurent au registre à une personne visée au paragraphe (7) ou (8).

#### Recherche

- (10) La personne qui se livre à des travaux de recherche peut, avec l'approbation écrite du directeur, examiner les renseignements qui figurent au registre et les utiliser. Toutefois, elle ne doit pas :
- a) les utiliser ou les communiquer à d'autres fins que des fins de recherche, d'activités universitaires ou de compilation de données statistiques;
  - b) communiquer des renseignements pouvant avoir pour effet d'identifier une personne dont le nom figure au registre.

#### Accès d'un enfant ou d'une personne inscrite

- (11) L'enfant ou la personne inscrite, ou l'avocat ou le mandataire de l'enfant ou de la personne inscrite, ne peut examiner que les renseignements figurant au registre qui se rapportent à l'enfant ou à la personne inscrite.

## Application de la Loi sur la santé mentale

(8) Si le mandat décerné en vertu du présent article concerne un dossier de renseignements personnels sur la santé et qu'il est contesté en vertu du paragraphe 35 (6) (déclaration du médecin traitant, audience) de la *Loi sur la santé mentale*, la même importance est accordée :

- a) aux questions énoncées au paragraphe 35 (7) de cette loi;
- b) au besoin de protéger l'enfant.

## Application de l'article 290

(9) Si le mandat décerné en vertu du présent article concerne un dossier relatif à un trouble mental au sens de l'article 290 et qu'il est contesté en vertu de cet article, la même importance est accordée :

- a) aux questions énoncées au paragraphe 290 (6);
- b) au besoin de protéger l'enfant.

## Télémandat

129 (1) Si le directeur ou la personne désignée par une société croit qu'il existe des motifs raisonnables de se faire décerner un mandat en vertu de l'article 128 et qu'il ne lui serait pas possible dans les circonstances de comparaître en personne devant le tribunal ou un juge de paix pour demander, conformément à l'article 128, qu'un mandat lui soit décerné, il peut faire la dénonciation sous serment par téléphone ou par un autre moyen de télécommunication au juge désigné à cette fin par le juge en chef de la Cour de justice de l'Ontario.

## Idem

(2) La dénonciation :

- a) d'une part, comprend l'énoncé des motifs qui permettent de croire que le dossier ou la partie de dossier est pertinent en ce qui concerne une enquête sur une allégation selon laquelle un enfant a ou peut avoir besoin de protection;
- b) d'autre part, expose les circonstances qui font qu'il n'est pas possible pour le directeur ou la personne désignée par la société de comparaître en personne devant le tribunal ou un juge de paix.

## Mandat décerné

(3) Le juge peut décerner un mandat autorisant l'accès au dossier ou à la partie précisée de celui-ci s'il est convaincu que la demande révèle :

- a) d'une part, qu'il existe des motifs raisonnables de croire que le dossier ou la partie de dossier est pertinent en ce qui concerne une enquête sur une allégation selon laquelle un enfant a ou peut avoir besoin de protection;
- b) d'autre part, qu'il existe des motifs raisonnables de passer outre à la comparution en personne aux fins de la présentation de la demande visée à l'article 128.

## Validité du mandat

(4) Le mandat décerné en vertu du présent article ne peut faire l'objet d'une contestation pour la seule raison qu'il n'existait pas de motifs raisonnables de passer outre à la comparution en personne aux fins de la présentation de la demande visée à l'article 128.

## Application de dispositions

(5) Les paragraphes 128 (2) à (9) s'appliquent, avec les adaptations nécessaires, au mandat décerné en vertu du présent article.

## Définition

(6) La définition qui suit s'applique au présent article.

«juge» Un juge de paix, un juge de la Cour de justice de l'Ontario ou un juge de la Cour de la famille de la Cour supérieure de justice.

## REGISTRE DES MAUVAIS TRAITEMENTS INFLIGÉS AUX ENFANTS

## Registre

130 (1) Les définitions qui suivent s'appliquent au présent article et à l'article 131.

«directeur» La personne nommée en vertu du paragraphe (2). («Director»)

«personne inscrite» Personne identifiée dans le registre, à l'exclusion :

- a) de celle qui fait un rapport à la société en application du paragraphe 122 (1) ou (2) et qui ne fait pas l'objet de ce rapport,



## Caractère confidentiel des renseignements

- (6) Aucune personne ne doit divulguer les renseignements obtenus au moyen de l'ordonnance visée au paragraphe (3) ou (4), sauf :

a) selon ce qui est précisé dans l'ordonnance;

b) au cours d'un témoignage dans une instance introduite sous le régime de la présente partie.

## Incompatibilité

- (7) Le paragraphe (6) l'emporte sur toute disposition de la Loi de 2004 sur la protection des renseignements personnels sur la santé.

## Secret professionnel de l'avocat

- (8) Sous réserve du paragraphe (9), le présent article s'applique malgré toute autre loi mais ne porte pas atteinte au secret professionnel qui lie l'avocat à son client.

## Application de la Loi sur la santé mentale

- (9) Si la motion ou la requête visée au paragraphe (2) concerne un dossier de renseignements personnels sur la santé, le paragraphe 35 (6) (déclaration du médecin traitant, audience) de la Loi sur la santé mentale s'applique et le tribunal accorde la même importance :

a) aux questions à étudier en application du paragraphe 35 (7) de cette loi;

b) au besoin de protéger l'enfant.

## Application de l'article 290

- (10) Si la motion ou la requête visée au paragraphe (2) concerne un dossier qui est un dossier relatif à un trouble mental au sens de l'article 290, cet article s'applique et le tribunal accorde la même importance :

a) aux questions à étudier en application du paragraphe 290 (6);

b) au besoin de protéger l'enfant.

## Mandat autorisant l'accès au dossier

- 128 (1) Le tribunal ou un juge de paix peut décerner un mandat d'accès à un dossier, ou à une partie précisée d'un dossier, s'il est convaincu, sur la foi d'une dénonciation faite sous serment par le directeur ou la personne désignée par une société, qu'il existe des motifs raisonnables de croire que le dossier, ou la partie de dossier, est pertinent en ce qui concerne une enquête sur une allégation selon laquelle un enfant a ou peut avoir besoin de protection.

## Pouvoirs conférés par le mandat

- (2) Le mandat autorise le directeur ou la personne désignée par la société à faire ce qui suit :

a) examiner le dossier qui y est précisé durant les heures normales de bureau ou durant les heures précisées dans le mandat;

b) faire des copies du dossier par tout moyen qui ne l'abîme pas;

c) prendre le dossier afin d'en faire des copies.

## Remise du dossier

- (3) La personne qui prend un dossier en vertu de l'alinéa (2) c) le rend promptement après l'avoir copié.

## Admissibilité des copies

- (4) La copie qu'une personne a tirée du dossier visé par le mandat décerné en vertu du présent article et qu'elle certifie être conforme à l'original est admissible en preuve au même titre que l'original et a la même valeur probante que lui.

## Durée du mandat

- (5) Le mandat est valide pendant sept jours.

## Exécution

- (6) Le directeur ou la personne désignée par la société peut faire appel à un agent de la paix pour qu'il l'aide dans l'exécution du mandat.

## Communication privilégiée

- (7) Le présent article s'applique malgré toute autre loi mais ne porte pas atteinte au secret professionnel qui lie l'avocat à son client.

## Divulgateur permissif

- a) étudie le cas;
- b) recommande à la société la manière de protéger l'enfant.

## Caractère prédominant du présent article et immunité

- (5) Malgré toute autre loi, une personne peut divulguer au groupe d'étude, ou à l'un de ses membres, les renseignements raisonnablement requis pour mener l'étude prévue au paragraphe (4).
- (6) Le paragraphe (5) s'applique même si les renseignements divulgués sont confidentiels ou privilégiés. Est irrecevable l'action intentée contre l'auteur de la divulgation qui agit conformément au paragraphe (5), sauf s'il agit dans l'intention de nuire ou sans motif raisonnable.
- Étude ou audience nécessaire**
- (7) La société qui a créé un groupe d'étude et qui détient des renseignements selon lesquels un enfant confié à ses soins en application du paragraphe 91 (2) (garde de l'enfant pendant l'ajournement) ou du paragraphe 98 (1) (ordonnance si l'enfant a besoin de protection) peut avoir subi des mauvais traitements ne doit pas rendre l'enfant aux soins de la personne qui en était responsable au moment où seraient survenus ces mauvais traitements, sauf si, selon le cas :

- a) elle a fait ce qui suit :

- (i) elle a renvoyé le cas au groupe d'étude,

- (ii) elle a reçu et étudié les recommandations du groupe d'étude;

- b) le tribunal a révoqué l'ordonnance confiant l'enfant aux soins de la société.

## ACCÈS AUX DOSSIERS PAR ORDONNANCE

## Production de dossiers

### Définition

- 127 (1) La définition qui suit s'applique au présent article et aux articles 128 et 129.

«dossier de renseignements personnels sur la santé» S'entend au sens de la *Loi sur la santé mentale*.

## Motion ou requête : production d'un dossier

- (2) Le directeur ou la société peut, à tout moment, par motion ou requête, demander que soit rendue l'ordonnance de production de tout ou partie d'un dossier prévue au paragraphe (3) ou (4).

## Ordonnance sur motion

- (3) Si le tribunal est convaincu que tout ou partie du dossier qui fait l'objet de la motion visée au paragraphe (2) contient des renseignements pouvant se rapporter à une instance introduite sous le régime de la présente partie et que la personne qui est en possession ou qui a le contrôle du dossier a refusé au directeur ou à la société la permission de l'examiner, il peut ordonner que cette personne produise le dossier, ou la partie précisée, de manière que le directeur, la société ou le tribunal puisse l'examiner et en faire des copies.

## Ordonnance sur requête

- (4) Si le tribunal est convaincu que tout ou partie du dossier qui fait l'objet de la requête visée au paragraphe (2) peut se rapporter à l'évaluation de la conformité à l'une ou l'autre des ordonnances suivantes et que la personne qui est en possession ou qui a le contrôle du dossier a refusé au directeur ou à la société la permission de l'examiner, il peut ordonner que cette personne produise le dossier, ou la partie précisée, de manière que le directeur, la société ou le tribunal puisse l'examiner et en faire des copies :

1. Une ordonnance rendue en vertu de l'alinéa 91 (2) b) ou c) sous réserve d'une surveillance.

2. Une ordonnance rendue en vertu de l'alinéa 91 (2) c) ou d) à l'égard du droit de visite.

3. Une ordonnance de surveillance rendue en vertu de la disposition 1 ou 4 du paragraphe 98 (1).

4. Une ordonnance de visite rendue en vertu de l'article 101.

5. Une ordonnance de visite ou une ordonnance de surveillance rendue à la suite d'une requête présentée en vertu de l'article 110 ou 112.

6. Une ordonnance de garde rendue en vertu de l'article 113.

7. Une ordonnance de ne pas faire rendue en vertu de l'article 134.

## Examen du dossier par le tribunal

- (5) Quand il étudie la possibilité de rendre l'ordonnance visée au paragraphe (3) ou (4), le tribunal peut examiner le dossier.

## Caractère prépondérant du présent article et immunité

(10) Le présent article s'applique même si les renseignements déclarés sont confidentiels ou privilégiés. Sont irrecevables les actions intentées contre l'auteur du rapport qui agit conformément au présent article, sauf s'il agit dans l'intention de nuire ou sans motif raisonnable de soupçonner la situation en question.

## Secrét professionnel de l'avocat

(11) Le présent article ne porte pas atteinte au secret professionnel qui lie l'avocat à son client.

## Incompatibilité

(12) Le présent article l'emporte sur toute disposition de la Loi de 2004 sur la protection des renseignements personnels sur la santé.

## Rapport relatif à un enfant ayant besoin de protection : évaluation et vérification par la société

**123 (1)** La société qui reçoit, en application de l'article 122, un rapport selon lequel un enfant, y compris un enfant confié à ses soins ou sous sa surveillance, a besoin ou peut avoir besoin de protection effective dès que possible une évaluation comme il est prescrit et vérifie les renseignements qui lui sont fournis, ou veille à ce qu'une autre société les évalue et les vérifie.

## Immunité

(2) Sont irrecevables les actions ou autres instances en dommages-intérêts introduites contre un employé de la société, qui agit de bonne foi, pour un acte accompli dans l'exercice effectif ou censé tel d'une obligation imposée à la société en application du paragraphe (1) ou pour une négligence ou un manquement qu'il aurait commis dans l'exercice de cette obligation.

## Rapport obligatoire par la société : cas où un enfant confié à ses soins et à sa garde subit des mauvais traitements

**124 (1)** La société qui obtient des renseignements selon lesquels un enfant confié à ses soins et à sa garde subit des mauvais traitements, peut en subir ou peut en avoir subi communiqué ces renseignements au directeur dès que possible.

## Définition

(2) La définition qui suit s'applique au présent article et aux articles 126 et 130.

«subir des mauvais traitements» En ce qui concerne un enfant, avoir besoin de protection au sens de l'alinéa 73 (2) a), c), e), f), g) ou j).

## Obligation de signaler le décès d'un enfant

**125** La personne ou la société qui obtient des renseignements selon lesquels un enfant est décédé les communique à un coroner si les conditions suivantes sont réunies :

- a) un tribunal a rendu, sous le régime de la présente loi, une ordonnance refusant à un parent de l'enfant le droit de visiter l'enfant ou assujettissant ce droit à une surveillance;
- b) sur requête d'une société, un tribunal a modifié l'ordonnance de manière à accorder le droit de visite ou à ne plus l'assujettir à une surveillance;
- c) l'enfant est décédé par suite d'un acte criminel commis par un parent ou un membre de sa famille pendant qu'il était sous sa garde ou sa responsabilité.

## GROUPES D'ÉTUDE

## Groupe d'étude

**126 (1)** La définition qui suit s'applique au présent article.

«groupe d'étude» S'entend d'un groupe créé par une société en application du paragraphe (2).

## Composition

(2) Chaque société crée un groupe d'étude comprenant :

- a) d'une part, des personnes qui possèdent les qualités professionnelles requises pour effectuer des évaluations d'ordre médical, psychologique, scolaire ou social ou des évaluations du développement;
- b) d'autre part, au moins un médecin dûment qualifié.

## Président

(3) Les membres du groupe d'étude choisissent un président parmi eux.

## Obligation du groupe

(4) Toutes les fois que la société renvoie à un groupe d'étude le cas d'un enfant qui peut subir ou avoir subi des mauvais traitements, le groupe, ou un comité d'au moins trois de ses membres désignés par le président :



12. Un enfant a moins de 12 ans et a tué ou gravement blessé une autre personne ou a causé des dommages importants aux biens d'une autre personne et doit subir un traitement ou recevoir des services afin d'empêcher la répétition de ces actes et le parent ou la personne qui est responsable de l'enfant ne fournit pas ces services ou ce traitement ou n'y donne pas accès ou, si l'enfant est incapable de consentir à un traitement, au sens de la *Loi de 1996 sur le consentement aux soins de santé*, refuse ou n'est pas en mesure de donner son consentement à ce traitement, ou n'est pas disponible pour le faire.
13. Un enfant a moins de 12 ans et a, à plusieurs reprises, blessé une autre personne ou causé une perte ou des dommages aux biens d'une autre personne, avec l'encouragement de la personne qui en est responsable ou en raison du défaut ou de l'incapacité de cette personne de surveiller l'enfant convenablement.

### Obligation continue de faire rapport

- (2) La personne qui a d'autres motifs raisonnables de soupçonner l'une ou l'autre des situations mentionnées au paragraphe (1) doit faire un nouveau rapport en application du paragraphe (1), même si elle en a fait auparavant au sujet du même enfant.
- Rapport direct**
- (3) La personne qui a l'obligation de déclarer une situation en application du paragraphe (1) ou (2) la déclare directement à la société et ne doit pas compter sur une autre personne pour la faire en son nom.

### Enfant plus âgé non visé par l'obligation de faire rapport

- (4) Les paragraphes (1) et (2) ne s'appliquent pas à l'égard d'un enfant de 16 ou 17 ans. Une personne peut toutefois faire un rapport en application du paragraphe (1) ou (2) à l'égard d'un enfant de 16 ou 17 ans s'il existe l'une ou l'autre des circonstances ou situations visées aux dispositions 1 à 11 du paragraphe (1) ou une circonstance ou situation prescrite.

### Infraction

- (5) Est coupable d'une infraction la personne visée au paragraphe (6) si :
- a) d'une part, elle contrevient au paragraphe (1) ou (2) en ne déclarant pas un soupçon;
- b) d'autre part, les renseignements sur lesquels se fonde son soupçon ont été obtenus dans le cadre de l'exercice de ses fonctions professionnelles et officielles.

### Fonctions professionnelles et officielles

- (6) Le paragraphe (5) s'applique à quiconque exerce des fonctions professionnelles ou officielles en rapport avec des enfants, notamment :

- a) un professionnel de la santé, y compris un médecin, une infirmière ou un infirmier, un dentiste, un pharmacien et un psychologue;

- b) un enseignant, une personne nommée à un poste qu'un conseil de l'éducation a désigné comme exigeant un éducateur de la petite enfance, un directeur d'école, un travailleur social, un conseiller familial, un travailleur pour la jeunesse et les loisirs, un exploitant ou un employé d'un centre de garde ou d'une agence de services de garde en milieu familial, ou un fournisseur de services de garde agréés au sens de la *Loi de 2014 sur la garde d'enfants et la petite enfance*;

- c) un représentant religieux;

- d) un médiateur et un arbitre;

- e) un agent de la paix et un coroner;

- f) un avocat;

- g) un fournisseur de services et son employé.

### Bénévoles exclus

- (7) La définition qui suit s'applique à l'alinéa (6) b).

«travailleur pour la jeunesse et les loisirs» Ne s'entend pas d'un bénévole.

### Administrateur, dirigeant ou employé d'une personne morale

- (8) L'administrateur, le dirigeant ou l'employé d'une personne morale qui autorise ou permet la commission d'une infraction prévue au paragraphe (5) par un employé de la personne morale ou y participe est coupable d'une infraction.

### Peine

- (9) La personne qui est déclarée coupable d'une infraction prévue au paragraphe (5) ou (8) est passible d'une amende d'au plus 5 000 \$.

situations suivantes doit immédiatement déclarer ses soupçons à une société et fournir les renseignements sur lesquels ils se fondent :

1. Un enfant a subi des maux physiques infligés par la personne qui en est responsable ou, selon le cas :
  - i. causés par le défaut de cette personne de lui fournir des soins, de subvenir à ses besoins, de le surveiller ou de le protéger convenablement, ou résultant de ce défaut,
  - ii. causés par la négligence habituelle de cette personne pour ce qui est de lui fournir des soins, de subvenir à ses besoins, de le surveiller ou de le protéger, ou résultant de cette négligence.
2. Un enfant risque vraisemblablement de subir des maux physiques infligés par la personne qui en est responsable ou, selon le cas :
  - i. causés par le défaut de cette personne de lui fournir des soins, de subvenir à ses besoins, de le surveiller ou de le protéger convenablement, ou résultant de ce défaut,
  - ii. causés par la négligence habituelle de cette personne pour ce qui est de lui fournir des soins, de subvenir à ses besoins, de le surveiller ou de le protéger, ou résultant de cette négligence.
3. Un enfant a subi des mauvais traitements d'ordre sexuel ou a été exploité sexuellement par la personne qui en est responsable ou par une autre personne si la personne responsable de l'enfant sait ou devrait savoir qu'il existe un risque de mauvais traitements d'ordre sexuel ou d'exploitation sexuelle et qu'elle ne protège pas l'enfant.
4. Un enfant risque vraisemblablement de subir des mauvais traitements d'ordre sexuel ou d'être exploité sexuellement dans les circonstances mentionnées à la disposition 3.
5. Un enfant a besoin d'un traitement en vue de guérir, de prévenir ou de soulager des maux physiques ou sa douleur et son parent ou la personne qui en est responsable ne fournit pas le traitement ou n'y donne pas accès ou, si l'enfant est incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, refuse ou n'est pas en mesure de donner son consentement pour le faire.
6. Un enfant a subi des maux affectifs qui se traduisent, selon le cas, par :
  - i. un grave sentiment d'angoisse,
  - ii. un état dépressif grave,
  - iii. un fort repliement sur soi,
  - iv. un comportement autodestructeur ou agressif marqué,
  - v. un important retard dans son développement,
 et il existe des motifs raisonnables de croire que les maux affectifs que l'enfant a subis résultent des actes, du défaut d'agir ou de la négligence habituelle de son parent ou de la personne qui en est responsable.
  7. Un enfant a subi le type de maux affectifs visés à la sous-disposition 6 i, ii, iii, iv ou v et son parent ou la personne qui en est responsable ne fournit pas des services ou un traitement afin de remédier à ces maux ou de les soulager ou n'y donne pas accès ou, si l'enfant est incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, refuse ou n'est pas en mesure de donner son consentement à ce traitement, ou n'est pas disponible pour le faire.
  8. Un enfant risque vraisemblablement de subir le type de maux affectifs visés à la sous-disposition 6 i, ii, iii, iv ou v résultant des actes, du défaut d'agir ou de la négligence habituelle de son parent ou de la personne qui en est responsable.
  9. Un enfant risque vraisemblablement de subir le type de maux affectifs visés à la sous-disposition 6 i, ii, iii, iv ou v et son parent ou la personne qui en est responsable ne fournit pas des services ou un traitement afin de prévenir ces maux ou n'y donne pas accès ou, si l'enfant est incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, refuse ou n'est pas en mesure de donner son consentement à ce traitement, ou n'est pas disponible pour le faire.
  10. L'état mental ou affectif ou le trouble de développement d'un enfant risque, s'il n'y est pas remédié, de porter gravement atteinte à son développement et son parent ou la personne qui en est responsable ne fournit pas un traitement afin de remédier à cet état ou à ce trouble ou de le soulager ou n'y donne pas accès ou, si l'enfant est incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, refuse ou n'est pas en mesure de donner son consentement à ce traitement, ou n'est pas disponible pour le faire.
  11. Le parent de l'enfant est décédé ou ne peut pas exercer ses droits de garde sur l'enfant et n'a pas pris de mesures suffisantes relativement à la garde de l'enfant et aux soins à lui fournir ou, si l'enfant est placé dans un établissement, le parent refuse d'en assumer la garde et de lui fournir des soins, n'est pas en mesure de le faire ou n'est pas disposé à le faire.

b) le tribunal a ajourné l'audience prévue à l'article 111 (révision du statut de l'enfant),

cette période est répétée prolongée soit jusqu'à ce que l'appel soit définitivement réglé et jusqu'à ce qu'une nouvelle audience ordonnée lors de l'appel prenne fin, soit jusqu'à ce qu'une ordonnance soit rendue en vertu de l'article 111.

#### Prolongation de six mois

(5) Sous réserve des dispositions 2 et 4 du paragraphe 98 (1), le tribunal peut rendre une ordonnance prolongeant d'une période maximale de six mois la période prévue au paragraphe (1), si cette mesure est dans l'intérêt véritable de l'enfant.

#### Expiration des ordonnances

120 Une ordonnance rendue en vertu de la présente partie expire lorsque le premier des événements suivants qui concerne l'enfant faisant l'objet de l'ordonnance se réalise :

a) l'enfant atteint l'âge de 18 ans;

b) l'enfant se marie.

#### SOINS ET SOUTIEN CONTINUS

##### Soins et soutien continus

121 (1) Une société et, dans le cas d'une personne inuite, métisse ou de Premières Nations, une agence, peut fournir des soins et un soutien à une personne conformément aux règlements dans l'une ou l'autre des circonstances suivantes :

1. L'ordonnance de garde prévue à l'alinéa 113 (1) b) ou l'ordonnance prévue à la disposition 3 du paragraphe 98 (1) ou à l'alinéa 113 (1) c) et ayant pour effet de confier un enfant aux soins d'une société de façon prolongée a été rendue à l'égard de cette personne pendant qu'elle était un enfant et elle expire en application de l'article 120;

2. La personne a conclu une entente avec la société en vertu de l'article 76 et l'entente expire au 18<sup>e</sup> anniversaire de naissance de la personne;

3. La personne a 18 ans ou plus et, lorsqu'elle avait 16 ou 17 ans, elle était admissible à des services de soutien prescrits, même si elle ne les recevait pas;

4. Dans le cas d'une personne inuite, métisse ou de Premières Nations de 18 ans ou plus, la disposition 1, 2 ou 3 s'applique ou cette personne recevait des soins conformes aux traditions immédiatement avant son 18<sup>e</sup> anniversaire de naissance et la personne qui en avait soin recevait de la société ou d'une entité la subvention prévue à l'article 70;

##### Reprise de la réception de soins et d'un soutien

(2) Sous réserve des conditions prévues au présent article, la personne qui a choisi de ne plus recevoir les soins et le soutien prévus au présent article peut choisir de les recevoir à nouveau.

##### Idem

(3) Le paragraphe (2) s'applique si la personne a choisi à une seule reprise de ne plus recevoir les soins et le soutien prévus. Il s'applique aussi, à la discrétion de la société ou de l'agence qui fournit ces soins et ce soutien, si la personne a choisi à plusieurs reprises de ne plus les recevoir.

##### Soins et soutien continus

121 Une société ou une entité prescrite conclut une entente en vue de fournir des soins et un soutien à une personne conformément aux règlements dans chacune des circonstances suivantes :

1. L'ordonnance de garde prévue à l'alinéa 113 (1) b) ou l'ordonnance prévue à la disposition 3 du paragraphe 98 (1) ou à l'alinéa 113 (1) c) et ayant pour effet de confier un enfant aux soins d'une société de façon prolongée a été rendue à l'égard de cette personne pendant qu'elle était un enfant et elle expire en application de l'article 120;

2. La personne a conclu une entente avec la société en vertu de l'article 76 et l'entente expire au 18<sup>e</sup> anniversaire de naissance de la personne;

3. La personne a 18 ans ou plus et elle était admissible à des services de soutien prescrits.

4. Dans le cas d'une personne inuite, métisse ou de Premières Nations de 18 ans ou plus, la disposition 1, 2 ou 3 s'applique ou cette personne recevait des soins conformes aux traditions immédiatement avant son 18<sup>e</sup> anniversaire de naissance et la personne qui en avait soin recevait de la société ou d'une entité la subvention prévue à l'article 70.

#### OBLIGATION DE FAIRE RAPPORT

##### Obligation de déclarer le besoin de protection

122 (1) Malgré les dispositions de toute autre loi, une personne, notamment celle qui exerce des fonctions professionnelles ou officielles en rapport avec des enfants, qui a des motifs raisonnables de soupçonner l'existence de l'une ou l'autre des



e) dans le cas d'un enfant inuit, métis ou de Premières Nations, la personne visée à l'alinéa a), b), c) ou d) ou le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

## Exception

(2) Le paragraphe (1) ne s'applique pas à l'ordonnance portant sur l'évaluation visée à l'article 95.

## Soins et garde de l'enfant pendant l'appel

(3) Si la décision concernant les soins et la garde de l'enfant est portée en appel en vertu du paragraphe (1), il est sursis à l'exécution de la décision pendant les 10 jours qui suivent la signification de l'avis d'appel au tribunal qui a rendu la décision. Si l'enfant est confié aux soins et à la garde de la société lorsque la décision est rendue, il reste aux soins et à la garde de la société jusqu'à ce que se réalise la première des éventualités suivantes :

a) la période prévue de 10 jours arrive à expiration;

b) une ordonnance est rendue en vertu du paragraphe (4).

## Ordonnance provisoire

(4) Dans l'intérêt véritable de l'enfant, la Cour supérieure de justice peut rendre une ordonnance provisoire portant sur les soins et la garde de l'enfant en attendant le règlement définitif de l'appel. À la suite d'une motion présentée par une partie avant le règlement définitif de l'appel, la Cour peut modifier ou révoquer l'ordonnance ou en rendre une autre.

## Non-prorogation du délai

(5) Si l'enfant a été placé en vue de son adoption sous le régime de la partie VIII (Adoption et délivrance de permis relatifs à l'adoption), aucune prorogation du délai d'appel n'est accordée.

## Preuve supplémentaire

(6) La Cour peut recevoir des éléments de preuve supplémentaires qui se rapportent à des événements postérieurs à la décision portée en appel.

## Lieu de l'audience

(7) L'appel interjeté en vertu du présent article est entendu dans le comté ou le district où l'ordonnance faisant l'objet de l'appel a été rendue.

## Champ d'application de l'article 85

(8) L'article 85 (règles relatives aux audiences) s'applique, avec les adaptations nécessaires, à l'appel interjeté en vertu du présent article.

## EXPIRATION DES ORDONNANCES

### Délai

119 (1) Sous réserve des paragraphes (4) et (5), le tribunal ne doit pas rendre une ordonnance en vertu de la disposition 2 du paragraphe 98 (1) ayant pour effet de confier un enfant aux soins et à la garde d'une société de façon provisoire pendant une période supérieure à ce qui suit :

a) 12 mois, si l'enfant a moins de 6 ans le jour où le tribunal rend l'ordonnance;

b) 24 mois, si l'enfant a 6 ans ou plus le jour où le tribunal rend l'ordonnance.

### Calcul du délai

(2) La période pendant laquelle l'enfant a été confié aux soins et à la garde d'une société conformément à l'une ou l'autre des mesures suivantes entre dans le calcul de la période visée au paragraphe (1) :

1. Une entente conclue en vertu du paragraphe 74 (1) (entente relative à des soins temporaires).

2. Une ordonnance provisoire rendue en vertu de l'alinéa 91 (2) d) (garde de l'enfant pendant l'ajournement).

### Périodes antérieures prises en compte

(3) La période mentionnée au paragraphe (1) doit comprendre les périodes antérieures pendant lesquelles l'enfant était confié aux soins et à la garde d'une société en application d'une ordonnance rendue en vertu de la disposition 2 du paragraphe 98 (1) ayant pour effet de confier l'enfant aux soins d'une société de façon provisoire ou dans les cas visés au paragraphe (2), à l'exclusion de toute période précédant une période continue d'au moins cinq ans pendant laquelle l'enfant n'était pas confié aux soins et à la garde d'une société.

### Délai réputé prorogé

(4) Si la période visée au paragraphe (1) ou (5) expire et que l'un ou l'autre des événements suivants se réalise :

a) un appel d'une ordonnance rendue en vertu du paragraphe 98 (1) a été interjeté, mais n'est pas encore réglé;

## Avis à la société

(2) Si une personne présente une plainte à la Commission en vertu de l'alinéa (1) b) après l'avoir présentée à la société en vertu de l'article 116, la Commission en avise la société, laquelle peut mettre fin à son examen ou le suspendre, selon ce qu'elle estime approprié.

## Plainte présentée à la Commission

(3) La plainte présentée à la Commission en vertu du présent article doit l'être conformément aux règlements.

## Questions pouvant faire l'objet d'une révision

(4) Les questions suivantes peuvent faire l'objet d'une révision par la Commission conformément au présent article :

1. Des allégations selon lesquelles la société a refusé de traiter une plainte présentée par le plaignant en vertu du paragraphe 116 (1) comme l'exige le paragraphe 116 (2).

2. Des allégations selon lesquelles la société n'a pas répondu à la plainte dans le délai exigé par règlement.

3. Des allégations selon lesquelles la société ne s'est pas conformée à la procédure d'examen des plaintes ou à toute autre exigence en matière de procédure prévue par la présente loi en ce qui concerne l'examen des plaintes.

4. Des allégations selon lesquelles la société ne s'est pas conformée au paragraphe 14 (2).

5. Des allégations selon lesquelles la société n'a pas donné au plaignant les motifs d'une décision qui concerne ses intérêts.

6. Toute autre question prescrite.

## Révision effectuée par la Commission

(5) Sur réception d'une plainte présentée en vertu du présent article, la Commission procède à la révision de la question.

## Application

(6) Les paragraphes 116 (7), (8) et (9) s'appliquent, avec les adaptations nécessaires, à la révision d'une plainte présentée en vertu du présent article.

## Décision de la Commission

(7) Après avoir révisé la plainte, la Commission peut :

a) ordonner à la société de traiter la plainte présentée par le plaignant conformément à la procédure d'examen des plaintes établie par règlement;

b) ordonner à la société de fournir une réponse au plaignant dans le délai que la Commission précise;

c) ordonner à la société de se conformer à la procédure d'examen des plaintes établie par règlement ou à toute autre exigence prévue par la présente loi;

d) ordonner à la société de fournir au plaignant les motifs écrits d'une décision;

e) rejeter la plainte;

f) rendre toute autre ordonnance prescrite.

## Questions du ressort du tribunal

(8) La Commission ne doit pas réviser une plainte présentée en vertu du présent article si l'objet de la plainte, selon le cas :

a) est une question que le tribunal a tranchée ou dont il est saisi;

b) est assujéti à un autre processus décisionnel prévu par la présente loi ou la Loi de 1995 sur les relations de travail.

## APPELS

## Appel

118 (1) Il peut être interjeté appel devant la Cour supérieure de justice d'une ordonnance du tribunal rendue en vertu de la présente partie. Peut faire appel :

a) l'enfant, s'il a le droit de participer à l'instance en vertu du paragraphe 78 (6) (participation de l'enfant);

b) un parent de l'enfant;

c) la personne qui était responsable de l'enfant immédiatement avant l'intervention prévue sous le régime de la présente partie;

d) le directeur ou le directeur local;

**Procédure d'examen des plaintes**  
(2) Lorsqu'elle reçoit une plainte présentée en vertu du paragraphe (1), la société la traite conformément à la procédure d'examen des plaintes établie par règlement, sous réserve du paragraphe 117 (2).

**Mise à la disposition du public**  
(3) La société met les renseignements relatifs à la procédure d'examen des plaintes à la disposition de toute personne qui en fait la demande.

**Mise à la disposition du public**  
(3) La société met les renseignements relatifs à la procédure d'examen des plaintes à la disposition de toute personne qui en fait la demande.  
**Décision de la société**  
(4) Sous réserve du paragraphe (5), la décision que prend la société à l'issue de la procédure d'examen des plaintes est définitive.

**Demande de révision présentée à la Commission**  
(5) Si une plainte se rapporte à l'une ou l'autre des questions suivantes, le plaignant peut demander à la Commission, conformément aux règlements, de réviser la décision prise par la société à l'issue de la procédure d'examen des plaintes :  
1. Une question visée au paragraphe 117 (4).  
2. Toute autre question prescrite.

**Révision effectuée par la Commission**  
(6) Sur réception d'une requête présentée en vertu du paragraphe (5), la Commission avise la société de la requête et procède à la révision de sa décision.

**Composition de la Commission**  
(7) La Commission se compose de membres qui possèdent l'expérience et les qualités requises prescrites.  
**Audience facultative**  
(8) La Commission peut tenir une audience, auquel cas elle se conforme aux règles de pratique et de procédure prescrites.

**Non-application**  
(9) La Loi sur l'exercice des compétences légales ne s'applique pas à une audience visée au présent article.  
**Décision de la Commission**  
(10) À l'issue de la révision de la décision prise par une société à l'égard d'une plainte, la Commission peut :  
a) s'il s'agit d'une question visée au paragraphe 117 (4), rendre toute ordonnance prévue au paragraphe 117 (7), selon ce qui est approprié;  
b) renvoyer la question à la société pour un autre examen;

c) confirmer la décision de la société;  
d) rendre toute autre ordonnance prescrite.  
**Questions du ressort du tribunal**  
(11) Une société ne doit pas examiner une plainte présentée en vertu du présent article si l'objet de la plainte, selon le cas :

a) est une question que le tribunal a tranchée ou dont il est saisi;  
b) est assujéti à un autre processus décisionnel prévu par la présente loi ou la Loi de 1995 sur les relations de travail.  
**Plainte à la Commission**

117 (1) Si une plainte concernant un service demandé à une société ou que celle-ci a fourni se rapporte à une question visée au paragraphe (4), la personne qui a demandé le service ou qui l'a obtenu peut, selon le cas :  
a) décider de ne pas présenter la plainte à la société en vertu de l'article 116 et la présenter directement à la Commission en vertu du présent article;  
b) si elle présente d'abord la plainte à la société en vertu de l'article 116, la présenter à la Commission avant l'issue de la procédure d'examen des plaintes de la société.



## Révocation d'une ordonnance ayant pour effet de confier l'enfant aux soins d'une société de façon prolongée

(3) Toute ordonnance rendue antérieurement en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa (1) c) et ayant pour effet de confier un enfant aux soins d'une société de façon prolongée est révoquée si une ordonnance prévue à l'alinéa (1) a) ou b) est rendue à l'égard de l'enfant.

## Ordonnance de surveillance assortie de conditions

(4) S'il rend une ordonnance de surveillance en vertu de l'alinéa (1) a), le tribunal peut imposer :

- a) des conditions raisonnables relativement à la surveillance de l'enfant et aux soins à lui donner;
- b) des conditions raisonnables aux personnes suivantes :

(i) un parent de l'enfant,

(ii) la personne aux soins et à la garde de laquelle l'enfant sera confié en application de l'ordonnance,

(iii) l'enfant,

(iv) toute autre personne, à l'exception d'un parent de famille d'accueil, qui propose un programme de soins et de garde ou un programme de droit de visite à l'égard de l'enfant ou qui participerait à un tel programme;

c) des conditions raisonnables à la société qui surveillera le placement, sans toutefois exiger qu'elle fournisse une aide financière ou qu'elle achète des biens ou des services.

## Droit de visite

(5) L'article 102 s'applique, avec les adaptations nécessaires, si le tribunal rend une ordonnance prévue à l'alinéa (1) a), b) ou c).

## Instance relative à la garde

(6) L'ordonnance rendue en vertu du présent article ou l'instance introduite sous le régime de la présente partie a pour effet de surseoir à toute instance relative à la garde du même enfant ou au droit de visiter cet enfant introduite sous le régime de la *Loi portant réforme du droit de l'enfance*, sauf autorisation du tribunal dans cette dernière instance.

## Droits et responsabilités

(7) La personne à qui la garde d'un enfant est accordée en application d'une ordonnance prévue au présent article possède les droits et les responsabilités d'un parent à l'égard de l'enfant et doit exercer ces droits et assumer ces responsabilités dans l'intérêt véritable de l'enfant.

## Révocation annuelle d'une ordonnance par le directeur

114 (1) Au moins une fois au cours de chaque année civile, le directeur ou la personne qu'il autorise effectue la révision du statut de l'enfant qui réunit les conditions suivantes :

a) il est confié aux soins d'une société de façon prolongée en application de l'ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c);

b) il était confié aux soins d'une société de façon prolongée en application d'une ordonnance visée à l'alinéa a) au cours des 24 mois précédents;

c) son statut n'a pas, au cours de cette période, fait l'objet d'une révision en application du présent article ou de l'article 113.

## Directive à la société

(2) À l'issue de la révision prévue au paragraphe (1), le directeur peut ordonner à la société de présenter la requête en révision visée au paragraphe 112 (2) ou donner toute autre directive qui, à son avis, est dans l'intérêt véritable de l'enfant.

## Enquête du juge

115 (1) Le ministre peut nommer un juge de la Cour de l'Ontario pour enquêter sur une question relative à un enfant confié aux soins d'une société ou à la bonne application de la présente partie. Le juge nommé effectue cette enquête et présente son rapport écrit au ministre.

## Application de la Loi de 2009 sur les enquêtes publiques

(2) L'article 33 de la *Loi de 2009 sur les enquêtes publiques* s'applique à une enquête effectuée par un juge en vertu du paragraphe (1).

## Plainte à une société

116 (1) Une personne peut, conformément aux règlements, présenter une plainte à une société concernant un service qu'elle lui a demandé ou que la société lui a fourni.

- (c) la personne auprès de qui l'enfant a été placé, si l'enfant fait l'objet d'une ordonnance de surveillance par la société rendue en vertu de l'alinéa 113 (1) a);
- (d) la personne à qui la garde de l'enfant a été accordée, si l'enfant fait l'objet d'une ordonnance de garde rendue en vertu de l'alinéa 113 (1) b);
- (e) tout parent de famille d'accueil qui a pris soin de l'enfant de façon continue pendant les six mois qui ont précédé la requête;
- (f) dans le cas d'un enfant inuit, métis ou de Premières Nations, les personnes visées à l'alinéa a), b), c), d) ou e) et le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.
- Période de six mois**
- (7) Aucune requête ne doit être présentée en vertu du paragraphe (4) dans les six mois qui suivent le dernier en date des jours suivants :

- a) le jour où l'ordonnance a été rendue en vertu du paragraphe 98 (1) ou 113 (1), selon le cas;
- b) le jour du règlement de la dernière requête prévue au paragraphe (4);
- c) le jour du règlement définitif ou du désistement de l'appel de l'ordonnance visée à l'alinéa a) ou de la décision visée à l'alinéa b).

### Exception

- (8) Le paragraphe (7) ne s'applique pas si :
- a) d'une part, l'enfant fait l'objet, selon le cas :

- (i) d'une ordonnance de surveillance par la société rendue en vertu de l'alinéa 113 (1) a),
- (ii) d'une ordonnance de garde rendue en vertu de l'alinéa 113 (1) b),
- (iii) d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) et ayant pour effet de confier l'enfant aux soins d'une société de façon prolongée, et d'une ordonnance de visite rendue en vertu de l'article 101;

- b) d'autre part, le tribunal est convaincu qu'un élément important du programme de soins à fournir à l'enfant qu'il a précisé dans sa décision n'est pas mis en application.

### Aucune révision si l'enfant est placé en vue de son adoption

- (9) Aucune personne ou société ne doit présenter une requête en vertu du présent article à l'égard d'un enfant qui est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) et qui est placé auprès d'une personne par la société ou le directeur en vue de son adoption sous le régime de la partie VIII (Adoption et délivrance de permis relatifs à l'adoption) si l'enfant habite toujours chez cette personne.

### Soins et garde provisoires

- (10) Si une requête est présentée en vertu du présent article, l'enfant reste confié aux soins et à la garde de la personne ou de la société qui en est responsable et ce, jusqu'au règlement de la requête, à moins que le tribunal ne soit convaincu qu'il est dans l'intérêt véritable de l'enfant de procéder à un changement.

### Ordonnance du tribunal

- 113 (1) Si une requête en révision du statut d'un enfant est présentée en vertu de l'article 112, le tribunal peut, dans l'intérêt véritable de l'enfant :

- a) ordonner que l'enfant soit confié aux soins et à la garde d'un parent ou d'une autre personne, sous réserve de la surveillance par la société, pendant une période précise comprise entre 3 et 12 mois;

- b) ordonner que la garde de l'enfant soit accordée à une ou plusieurs personnes, y compris un parent de famille d'accueil, avec le consentement de cette ou ces personnes;

- c) ordonner que l'enfant soit confié aux soins de la société de façon prolongée jusqu'à ce que l'ordonnance soit révoquée en application du présent article ou jusqu'à ce qu'elle expire en application de l'article 120;

- d) révoquer ou modifier l'ordonnance rendue en vertu de l'article 98 ou du présent article.

### Modification, révocation ou nouvelle ordonnance

- (2) Lorsqu'il rend une ordonnance en vertu du paragraphe (1), le tribunal peut, sous réserve de l'article 102, modifier ou révoquer une ordonnance de visite ou rendre une nouvelle ordonnance en vertu de l'article 101.

### Révision du statut : cas où différentes ordonnances ont été rendues

- b) ordonner la révocation de l'ordonnance originale à une date ultérieure précise;
- c) rendre une ou plusieurs ordonnances supplémentaires en application de l'article 98;
- d) rendre une ordonnance en vertu de l'article 99.

112 (1) Le présent article s'applique si un enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) ou qu'il fait l'objet d'une ordonnance de surveillance par la société rendue en vertu de l'alinéa 113 (1) a) ou d'une ordonnance de garde rendue en vertu de l'alinéa 113 (1) b).

### Demande de révision par la société

- (2) La société qui a ou avait le soin, la garde ou la surveillance de l'enfant :

- a) peut, à tout moment, sous réserve du paragraphe (9), présenter une requête au tribunal en vue de faire réviser le statut de l'enfant;

- b) doit, avant l'expiration de l'ordonnance, présenter une requête au tribunal en vue de faire réviser le statut de l'enfant, s'il s'agit d'une ordonnance de surveillance par la société, sauf si l'ordonnance expire par l'effet de l'article 120;

- c) doit, dans les cinq jours suivant le retrait de l'enfant, présenter une requête au tribunal en vue de faire réviser le statut de l'enfant, si elle l'a retiré, selon le cas :

- (i) des soins d'une personne auprès de qui il était placé en application d'une ordonnance de surveillance par la société rendue en vertu de l'alinéa 113 (1) a),

- (ii) de la garde d'une personne qui en avait la garde en application d'une ordonnance de garde rendue en vertu de l'alinéa 113 (1) b).

### Application des alinéas (2) a) et c)

- (3) Les alinéas (2) a) et c) s'appliquent également à la société qui a compétence dans le comté ou le district :

- a) où réside le parent ou l'autre personne auprès de qui l'enfant est placé, si l'enfant fait l'objet d'une ordonnance de surveillance par la société rendue en vertu de l'alinéa 113 (1) a);

- b) où réside la personne qui a la garde de l'enfant, si l'enfant fait l'objet de l'ordonnance de garde prévue à l'alinéa 113 (1) b).

### Demande d'une révision par d'autres personnes

- (4) L'une ou l'autre des personnes suivantes peut présenter, sur avis adressé à la société, la requête en révision du statut de l'enfant prévue au présent article :

- a) l'enfant, s'il a au moins 12 ans;

- b) un parent de l'enfant;

- c) la personne auprès de qui l'enfant a été placé en application d'une ordonnance de surveillance par la société rendue en vertu de l'alinéa 113 (1) a);

- d) la personne à qui la garde de l'enfant a été accordée, si l'enfant fait l'objet de l'ordonnance de garde rendue en vertu de l'alinéa 113 (1) b);

- e) un parent de famille d'accueil, si l'enfant a résidé de façon continue avec cette personne pendant au moins les deux années qui ont précédé la requête;

- f) dans le cas d'un enfant inuit, métis ou de Premières Nations, la personne visée à l'alinéa a), b), c), d) ou e) ou le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

### Autorisation du tribunal requise

- (5) Malgré l'alinéa (4) b), un parent de l'enfant ne doit pas présenter de requête en vertu du paragraphe (4) sans l'autorisation du tribunal si l'enfant a reçu des soins continus du même parent de famille d'accueil ou de la même personne en application d'une ordonnance de garde pendant au moins les deux années qui ont précédé la requête.

### Avis

- (6) La société qui présente une requête en vertu du paragraphe (2) ou qui reçoit l'avis d'une requête prévu au paragraphe (4) donne avis de la requête aux personnes suivantes :

- a) l'enfant, sauf disposition contraire du paragraphe 78 (4) ou (5);

- b) un parent de l'enfant, si l'enfant a moins de 16 ans;



- a) peut, à tout moment, présenter une requête au tribunal en vue de faire réviser le statut de l'enfant;
- b) doit, avant l'expiration de l'ordonnance, présenter une requête au tribunal en vue de faire réviser le statut de l'enfant, sauf si l'ordonnance expire par l'effet de l'article 120;
- c) doit, dans les cinq jours du retrait de l'enfant, présenter une requête au tribunal en vue de faire réviser le statut de l'enfant, si la société l'a retiré des soins d'une personne auprès de qui il était placé en application d'une ordonnance de surveillance par la société.

#### Application des alinéas (2) a) et c)

- (3) Si l'enfant fait l'objet d'une ordonnance de surveillance par la société, les alinéas (2) a) et c) s'appliquent également à la société qui a compétence dans le comté ou le district où réside le parent ou l'autre personne auprès de qui il est placé.

#### Révision du statut demandé par d'autres personnes

- (4) L'une ou l'autre des personnes suivantes peut présenter une requête en révision du statut de l'enfant et communiquer un avis à cet effet à la société :

- a) l'enfant, s'il a au moins 12 ans;

- b) un parent de l'enfant;

- c) la personne auprès de qui l'enfant a été placé en application d'une ordonnance de surveillance par la société;

- d) dans le cas d'un enfant inuit, métis ou de Premières Nations, la personne visée à l'alinéa a), b) ou c) ou le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

#### Avis

- (5) La société qui présente une requête en application du paragraphe (2) ou qui reçoit l'avis d'une requête prévu au paragraphe (4) donne avis de la requête aux personnes suivantes :

- a) l'enfant, sauf disposition contraire du paragraphe 78 (4) ou (5);

- b) un parent de l'enfant;

- c) la personne auprès de qui l'enfant a été placé en application d'une ordonnance de surveillance par la société;

- d) tout parent de famille d'accueil qui a pris soin de l'enfant de façon continue pendant les six mois qui ont précédé la requête;

- e) dans le cas d'un enfant inuit, métis ou de Premières Nations, les personnes visées aux alinéas a), b), c) et d) et le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

#### Période de six mois

- (6) Aucune requête ne doit être présentée en vertu du paragraphe (4) dans les six mois qui suivent le dernier en date des jours suivants :

- a) le jour où l'ordonnance originale a été rendue en vertu du paragraphe 98 (1);

- b) le jour du règlement de la dernière requête prévue au paragraphe (4);

- c) le jour du règlement définitif ou du désistement de l'appel de l'ordonnance visée à l'alinéa a) ou de la décision visée à l'alinéa b).

#### Exception

- (7) Le paragraphe (6) ne s'applique pas si le tribunal est convaincu qu'un élément important du programme portant sur les soins à fournir à l'enfant et figurant dans la décision du tribunal n'est pas mis en application.

#### Soins et garde provisoires

- (8) Si une requête est présentée en vertu du présent article, l'enfant reste confié aux soins et à la garde de la personne ou de la société qui en est responsable et ce, jusqu'au règlement de la requête, à moins que le tribunal ne soit convaincu qu'il est dans l'intérêt véritable de l'enfant de procéder à un changement.

#### Modification de l'ordonnance

- 111 Si une requête est présentée en vertu de l'article 110 en vue de faire réviser le statut de l'enfant, le tribunal peut, dans l'intérêt véritable de l'enfant :

- a) modifier ou révoquer l'ordonnance originale rendue en vertu du paragraphe 98 (1), y compris une condition ou une disposition relative au droit de visite qui fait partie de l'ordonnance;

### Enfant confié aux soins d'une société de façon provisoire

107 (1) Si un enfant est confié aux soins d'une société de façon provisoire en application d'une ordonnance rendue en vertu de la disposition 2 du paragraphe 98 (1), la société assume les droits et les responsabilités d'un parent en ce qui concerne les soins à donner à l'enfant, sa garde et sa surveillance.

### Consentement au traitement : la société ou le parent peut agir

(2) Si un enfant est confié aux soins d'une société de façon provisoire en application d'une ordonnance rendue en vertu de la disposition 2 du paragraphe 98 (1) et qu'il est jugé incapable de consentir à un traitement, au sens de la *Loi de 1996 sur le consentement aux soins de santé*, la société peut agir à la place d'un parent pour ce qui est de consentir au traitement au nom de l'enfant, sauf si le tribunal ordonne que le parent conserve le pouvoir, en application de cette loi, de consentir ou non à ce traitement au nom de l'enfant jugé incapable.

### Exception

(3) Le tribunal ne doit pas rendre l'ordonnance prévue au paragraphe (2) si le défaut de consentir au traitement nécessaire a constitué un motif pour établir que l'enfant avait besoin de protection.

### Autorisation du tribunal : consentement donné par la société

(4) Si un parent visé par une ordonnance rendue en vertu du paragraphe (2) refuse ou n'est pas en mesure de donner son consentement à un traitement destiné à un enfant jugé incapable, ou n'est pas disponible pour le faire, et que le tribunal est convaincu que ce traitement serait dans l'intérêt véritable de l'enfant, le tribunal peut autoriser la société à agir à la place d'un parent pour ce qui est de consentir à ce traitement au nom de l'enfant.

### Consentement au mariage d'un enfant

(5) Si un enfant est confié aux soins d'une société de façon provisoire en application d'une ordonnance rendue en vertu de la disposition 2 du paragraphe 98 (1), le parent de l'enfant conserve le droit que peut lui reconnaître la *Loi sur le mariage* de donner ou de refuser son consentement au mariage de l'enfant.

### Enfant confié aux soins d'une société de façon prolongée

108 (1) Si un enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c), la Couronne assume les droits et les responsabilités d'un parent en ce qui concerne les soins à donner à l'enfant, sa garde et sa surveillance. Les pouvoirs, fonctions et obligations de la Couronne à l'égard de l'enfant, sauf ceux que la présente loi ou les règlements confient au directeur, sont assumés par la société aux soins de laquelle l'enfant est confié.

### Consentement au traitement donné par la société

(2) Si un enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) et qu'il est jugé incapable de consentir à un traitement, au sens de la *Loi de 1996 sur le consentement aux soins de santé*, la société peut agir à la place d'un parent pour ce qui est de consentir à ce traitement au nom de l'enfant.

### Obligation de la société : favoriser la création de liens familiaux pour un enfant confié à ses soins de façon prolongée

109 Si un enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c), la société fait tous les efforts raisonnables pour l'aider à développer des relations positives, solides et durables au sein d'une famille au moyen d'une des mesures suivantes :

1. L'adoption.
2. Une ordonnance de garde prévue au paragraphe 113 (1).
3. Dans le cas d'un enfant inuit, métis ou de Premières Nations :
  - i. un programme de soins conformes aux traditions,
  - ii. l'adoption,
  - iii. une ordonnance de garde prévue au paragraphe 113 (1).

### RÉVISION

### Révision du statut de l'enfant

110 (1) Le présent article s'applique si l'enfant fait l'objet soit d'une ordonnance de surveillance par la société rendue en vertu de la disposition 1 ou 4 du paragraphe 98 (1), soit d'une ordonnance rendue en vertu de la disposition 2 du paragraphe 98 (1) ayant pour effet de confier l'enfant aux soins d'une société de façon provisoire.

### Révision demandée par la société

(2) La société qui a le soin, la garde ou la surveillance de l'enfant :

**Audience de la Commission**  
(9) Sur réception d'une demande de révision de la proposition de retrait d'un enfant présentée par un parent de famille d'accueil, la Commission tient une audience en application du présent article.

#### **Enfant inuit, métis ou de Premières Nations**

(10) Sur réception d'une demande de révision de la proposition de retrait d'un enfant inuit, métis ou de Premières Nations, la Commission donne également un avis de réception de la demande et de la date de l'audience au représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

#### **Règles de pratique et de procédure**

(11) La Loi sur l'exercice des compétences légales s'applique à une audience visée au présent article. La Commission se conforme aux règles de pratique et de procédure supplémentaires prescrites.

#### **Composition de la Commission**

(12) Lorsqu'elle tient l'audience prévue au présent article, la Commission se compose de membres qui possèdent l'expérience et les qualités requises prescrites.

#### **Parties**

(13) Les personnes suivantes sont parties à l'audience prévue au présent article :

1. L'auteur de la demande.
2. La société.
3. Dans le cas d'un enfant inuit, métis ou de Premières Nations, les personnes visées aux dispositions 1 et 2 et un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.
4. Toute personne que la Commission joint comme partie en vertu du paragraphe (14).

#### **Fonction de parties**

(14) La Commission peut joindre une personne comme partie à la révision si, à son avis, cela est nécessaire afin de régler toutes les questions sur lesquelles porte la révision.

#### **Décision de la Commission**

(15) En fonction de la décision qu'elle a rendue relativement à la mesure adaptée à l'intérêt véritable de l'enfant, la Commission confirme la proposition de la société de retirer l'enfant ou ordonne à la société de ne pas donner suite à sa proposition. Elle donne les motifs de sa décision par écrit.

#### **Décision préalable**

(16) Sous réserve du paragraphe (17), la société ne doit pas donner suite à sa proposition de retrait de l'enfant, sauf si, selon le cas :

- a) le délai imparti pour demander la révision de la proposition de retrait de l'enfant prévu au paragraphe (8) a expiré et aucune demande n'a été présentée;
- b) dans le cas où une demande de révision de la proposition de retrait de l'enfant a été présentée en vertu du paragraphe (8), la Commission a confirmé la proposition de retrait en application du paragraphe (15).

#### **Cas où l'enfant risque de subir des maux**

(17) La société peut retirer l'enfant de la famille d'accueil avant l'expiration du délai imparti pour demander une révision prévu au paragraphe (8) ou après la présentation de la demande de révision si, de l'avis du directeur local, l'enfant risque vraisemblablement de subir des maux pendant le laps de temps nécessaire à la révision de cette décision par la Commission.

#### **Examen de certains placements**

(18) Les articles 62, 63, 64 et 65 (examen par le comité consultatif sur les placements en établissement, autre révision par la Commission) s'appliquent, avec les adaptations nécessaires, au placement en établissement effectué par la société en vertu du présent article.

#### **Définition**

(19) La définition qui suit s'applique au présent article.

«placement en établissement» S'entend au sens de l'article 61.



## Placement

(2) La société à qui est confié le soin de l'enfant choisit un placement en établissement conforme aux critères suivants :

- a) il constitue, pour l'enfant, la solution la moins restrictive;
- b) il respecte, dans la mesure du possible, la race de l'enfant, son ascendance, son lieu d'origine, sa couleur, son origine ethnique, sa citoyenneté, la diversité de sa famille, sa croyance, son sexe, son orientation sexuelle, son identité sexuelle et l'expression de son identité sexuelle;
- c) il respecte, dans la mesure du possible, le patrimoine culturel et linguistique de l'enfant;

d) dans le cas d'un enfant inuit, métis ou de Premières Nations, il est auprès, si cela est possible, d'un membre de sa famille élargie ou, si cela est impossible :

(i) dans le cas d'un enfant de Premières Nations, auprès d'une autre famille de Premières Nations;

(ii) dans le cas d'un enfant inuit, auprès d'une autre famille inuite;

(iii) dans le cas d'un enfant métis, auprès d'une autre famille métisse;

e) il tient compte de l'opinion et des désirs de l'enfant, qui doivent être dûment pris en considération eu égard à son âge et à son degré de maturité, ainsi que de l'opinion et des désirs de tout parent qui a le droit de visiter l'enfant.

## Enseignement

(3) La société à qui est confié le soin de l'enfant veille à ce que l'enfant reçoive un enseignement qui correspond à ses aptitudes et à ses talents.

## Placement hors de l'Ontario

(4) La société à qui est confié le soin de l'enfant ne doit pas le placer hors de l'Ontario, ni permettre à qui que ce soit de retirer définitivement l'enfant de l'Ontario, sauf si le directeur est convaincu que des circonstances extraordinaires justifient une telle mesure.

## Droits de l'enfant et des parents

(5) La société à qui est confié le soin de l'enfant :

- a) d'une part, veille à ce que l'enfant bénéficie de tous les droits visés à la partie II (Droits des enfants et des adolescents);

b) d'autre part, veille à ce qu'il soit tenu compte, dans les décisions importantes qu'elle prend concernant l'enfant, des désirs de tout parent qui a le droit de visiter l'enfant et, si l'enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c), de ceux de tout parent de famille d'accueil auprès de qui l'enfant a demeuré de façon continue pendant deux ans.

## Changement du placement

(6) La société à qui est confié le soin de l'enfant peut le retirer d'une famille d'accueil ou d'un autre placement en établissement si, de l'avis du directeur ou du directeur local, cette mesure est dans l'intérêt véritable de l'enfant.

## Avis de proposition de retrait de l'enfant

(7) Si l'enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c), qu'il a demeuré auprès d'un parent de famille d'accueil de façon continue pendant deux ans et que la société propose de le retirer en vertu du paragraphe (6), la société prend les mesures suivantes :

a) elle donne au parent de famille d'accueil un préavis écrit d'au moins 10 jours l'informant de sa proposition de retirer l'enfant et précisant qu'il a le droit de demander une révision en vertu du paragraphe (8);

b) dans le cas d'un enfant inuit, métis ou de Premières Nations, elle donne le préavis exigé à l'alinéa a) et :

(i) d'une part, elle donne un préavis écrit d'au moins 10 jours de sa proposition de retirer l'enfant au représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient;

(iii) d'autre part, après avoir donné le préavis prévu au sous-alinéa (i), elle consulte les représentants choisis par les bandes et les communautés au sujet du programme de soins à fournir à l'enfant.

## Demande de révision

(8) Un parent de famille d'accueil qui reçoit le préavis prévu à l'alinéa (7) a) peut, dans les 10 jours suivant la réception du préavis et conformément aux règlements, demander à la Commission de réviser la proposition de retrait de l'enfant.

## Révision de l'ordonnance de visite rendue en même temps qu'une ordonnance de garde

103 L'ordonnance de visite prévue à l'article 101 n'est pas susceptible de révision en application de la présente loi si elle est rendue en même temps que l'ordonnance de garde prévue à l'article 99. Toutefois, elle peut faire l'objet de la requête prévue à l'article 21 de la *Loi portant réforme du droit de l'enfance*, auquel cas les dispositions de cette loi s'appliquent comme si l'ordonnance avait été rendue sous le régime de celle-ci.

## Restriction relative à l'ordonnance de visite

104 Si, en vertu de la présente loi, une société a demandé, par voie de requête, à un tribunal une ordonnance portant sur le droit d'un parent d'un enfant de visiter cet enfant et que le tribunal rend l'ordonnance, le tribunal précise dans l'ordonnance la surveillance à laquelle le droit de visite est assujéti si, au moment où l'ordonnance est rendue, le parent a été accusé ou déclaré coupable d'une infraction au *Code criminel* (Canada) comportant un acte violent envers l'enfant ou son autre parent, à moins qu'il n'estime approprié de ne pas assujétir le droit de visite à cette surveillance.

## ORDONNANCES DE PAIEMENT

### Ordonnance de paiement par un parent

105 (1) Le tribunal qui confie l'enfant aux soins :

a) soit d'une société;

b) soit d'une personne autre que son parent, sous réserve de la surveillance par la société,

peut ordonner à un parent, ou à la succession d'un parent, de verser à la société un montant défini, à des intervalles précis, pour chaque jour où l'enfant est confié aux soins ou à la surveillance de la société.

### Critères

(2) Lorsqu'il rend une ordonnance en vertu du paragraphe (1), le tribunal tient compte des critères suivants qu'il juge pertinents :

1. L'avoir et les ressources de l'enfant et de son parent, ou de la succession de son parent.
2. La capacité de l'enfant à subvenir à ses propres besoins.
3. La capacité du parent, ou de la succession du parent, de subvenir aux besoins de l'enfant.
4. L'âge et la santé physique et mentale de l'enfant et du parent.
5. Les besoins mentaux, affectifs et physiques de l'enfant.
6. L'obligation légale pour le parent, ou la succession du parent, de subvenir aux besoins d'une autre personne.
7. Les aptitudes de l'enfant et les possibilités raisonnables qu'il a de se faire instruire.
8. Les droits légaux de l'enfant à des aliments provenant d'une autre source que les fonds publics.

### Cessation à 18 ans des effets de l'ordonnance

(3) Aucune ordonnance rendue en vertu du paragraphe (1) ne doit se prolonger au-delà du jour où l'enfant atteint l'âge de 18 ans.

### Pouvoir de modifier l'ordonnance

(4) Le tribunal peut modifier, suspendre ou révoquer une ordonnance rendue en vertu du paragraphe (1) s'il est convaincu que les circonstances dans lesquelles se trouve l'enfant ou le parent ont changé.

### Perception de montants par la municipalité

(5) Le conseil de la municipalité peut conclure une entente avec le conseil d'administration d'une société aux termes de laquelle la municipalité se charge de percevoir, pour le compte de la société, les montants qu'un parent est tenu de lui verser en application du paragraphe (1).

### Exécution de l'ordonnance

(6) L'ordonnance rendue en vertu du paragraphe (1) contre un parent peut être exécutée comme s'il s'agissait d'une ordonnance alimentaire rendue sous le régime de la partie III de la *Loi sur le droit de la famille*.

## ENFANTS CONFIES AUX SOINS D'UNE SOCIÉTÉ DE FAÇON PROVISOIRE OU PROLONGÉE

### Placement des enfants

106 (1) Le présent article s'applique si l'enfant est confié aux soins d'une société soit de façon provisoire en application d'une ordonnance rendue en vertu de la disposition 2 du paragraphe 98 (1), soit de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c).

ordonnance accordant à cette personne un droit de visite, sauf s'il est convaincu que des contacts continus avec cette personne ne seraient pas dans l'intérêt véritable de l'enfant.

#### **Droit de visite suite à l'ordonnance rendue en vertu du paragraphe 113 (1)**

(3) Si une ordonnance de surveillance est rendue en vertu de l'alinéa 113 (1) a) ou qu'une ordonnance de garde est rendue en vertu de l'alinéa 113 (1) b), le tribunal doit rendre une ordonnance accordant un droit de visite à chaque personne qui avait un tel droit avant la présentation de la requête prévue à l'article 112 visant à obtenir l'ordonnance, sauf s'il est convaincu que des contacts continus avec la personne ne seraient pas dans l'intérêt véritable de l'enfant.

#### **Révocation d'une ordonnance existante accordant un droit de visite**

(4) Si le tribunal rend une ordonnance en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) pour qu'un enfant soit confié aux soins d'une société de façon prolongée, l'ordonnance de visite rendue à l'égard de l'enfant sous le régime de la présente partie est révoquée.

#### **Ordonnance : droit de visiter un enfant confié aux soins d'une société de façon prolongée**

(5) Le tribunal ne doit pas rendre ou modifier l'ordonnance de visite prévue à l'article 101 à l'égard d'un enfant confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c), à moins d'être convaincu de ce qui suit :

a) la relation entre la personne et l'enfant est bénéfique et importante pour l'enfant;

b) le droit de visite ne compromettra pas les possibilités futures d'adoption de l'enfant.

#### **Ordonnance : droit de visiter un enfant confié aux soins d'une société de façon prolongée**

(5) Le tribunal ne doit pas rendre ou modifier l'ordonnance de visite prévue à l'article 101 à l'égard d'un enfant confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c), à moins d'être convaincu que l'ordonnance ou la modification serait dans l'intérêt véritable de l'enfant.

#### **Autres facteurs à prendre en considération : intérêt véritable**

(5.1) Dans le cadre de son processus décisionnel relativement à la question de savoir si une ordonnance ou une modification serait dans l'intérêt véritable de l'enfant en application du paragraphe (5), le tribunal prend en considération ce qui suit :

a) le fait de savoir si la relation entre la personne et l'enfant est bénéfique et importante pour l'enfant;

b) s'il le juge pertinent, le fait de savoir si le droit de visite compromettra les possibilités futures d'adoption de l'enfant.

#### **Titulaires et bénéficiaires d'un droit de visite**

(6) Si le tribunal rend ou modifie l'ordonnance de visite prévue à l'article 101 à l'égard d'un enfant confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c), il précise ce qui suit :

a) chaque personne qui s'est vu accorder un droit de visite;

b) chaque personne à l'égard de laquelle un droit de visite a été accordé.

#### **Révocation d'une ordonnance qui n'est plus dans l'intérêt véritable de l'enfant**

(7) Le tribunal révoque l'ordonnance de visite à l'égard d'un enfant confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) si, selon le cas :

a) l'ordonnance n'est plus dans l'intérêt véritable de l'enfant;

b) le tribunal n'est plus convaincu que les exigences énoncées aux alinéas (5) a) et b) sont satisfaites.

#### **Révocation d'une ordonnance qui n'est plus dans l'intérêt véritable de l'enfant**

(7) Le tribunal révoque l'ordonnance de visite à l'égard d'un enfant confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) si l'ordonnance n'est plus dans l'intérêt véritable de l'enfant, tel qu'il est établi en application du paragraphe (5.1).

#### **Contacts ou communication permis par la société**

(8) Si la société croit que les contacts ou la communication entre une personne et un enfant confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) sont dans l'intérêt véritable de l'enfant et qu'aucune ordonnance de communication prévue sous le régime de la partie VIII (Adoption et délivrance de permis relatifs à l'adoption) ou ordonnance de visite n'est en vigueur à l'égard de cette personne et de l'enfant, elle peut permettre ces contacts ou cette communication.



rendre, modifier ou révoquer l'ordonnance portant sur le droit de visite d'une personne à l'enfant, ou réciproquement. Il peut assortir l'ordonnance des conditions qu'il estime appropriées.

### **Qui peut présenter la requête**

(2) Si l'enfant est confié à la garde et aux soins ou à la surveillance d'une société, l'une ou l'autre des personnes suivantes peut demander au tribunal, par voie de requête, de rendre l'ordonnance prévue au paragraphe (1) :

1. L'enfant.

2. Toute autre personne, y compris, dans le cas d'un enfant inuit, métis ou de Premières Nations, le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

2. Toute autre personne, y compris un frère ou une sœur de l'enfant et, dans le cas d'un enfant inuit, métis ou de Premières Nations, le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

3. La société.

### **Avis**

(3) Le requérant visé à la disposition 2 du paragraphe (2) donne avis de sa requête à la société.

### **Obligation de la société de donner un avis de requête**

(4) La société qui présente ou qui reçoit la requête prévue au paragraphe (2) en donne avis :

a) à l'enfant, sous réserve des paragraphes 78 (4) et (5) (avis à l'enfant);

b) à un parent de l'enfant;

c) à la personne qui est responsable de l'enfant au moment de la requête;

d) dans le cas d'un enfant inuit, métis ou de Premières Nations, aux personnes visées aux alinéas a), b) et c) et à un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

### **Enfant de plus de 16 ans**

(5) Aucune ordonnance portant sur le droit de visite à une personne de 16 ans ou plus ne doit être rendue en vertu du paragraphe (1) sans le consentement de cette personne.

### **Période de six mois**

(6) Aucune personne, à l'exception d'une société, ne doit présenter la requête prévue au paragraphe (2) dans les six mois qui suivent le dernier en date des événements suivants :

a) le moment où une ordonnance est rendue en vertu de l'article 98;

b) le règlement d'une requête antérieure présentée par la même personne en vertu du paragraphe (2);

c) le règlement d'une requête présentée en vertu de l'article 110 ou 112;

d) le règlement définitif de l'appel ou le désistement d'appel de l'ordonnance visée à l'alinéa a), b) ou c),

### **Aucune requête si l'enfant est placé en vue de son adoption**

(7) Une personne ou une société ne doit pas présenter la requête prévue au paragraphe (2) si les conditions suivantes sont réunies :

a) l'enfant est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c);

b) il a été placé auprès d'une personne par la société ou le directeur en vue de son adoption sous le régime de la partie VIII (Adoption et délivrance de permis relatifs à l'adoption);

c) il habite toujours chez cette personne.

### **Droit de visite si l'enfant est retiré des soins de la personne responsable**

102 (1) Si une ordonnance est rendue en vertu de la disposition 1 ou 2 du paragraphe 98 (1) afin de retirer l'enfant des soins de la personne qui en était responsable immédiatement avant l'intervention prévue sous le régime de la présente partie, le tribunal doit rendre une ordonnance accordant à cette personne un droit de visite, sauf s'il est convaincu que des contacts continus avec cette personne ne seraient pas dans l'intérêt véritable de l'enfant.

### **Droit de visite suite à l'ordonnance rendue en vertu de l'article 99**

(2) Si une ordonnance de garde est rendue en vertu de l'article 99 afin de retirer l'enfant des soins de la personne qui en était responsable immédiatement avant l'intervention prévue sous le régime de la présente partie, le tribunal doit rendre une

## **Ordonnance : enfant rendu à la personne responsable de lui avant l'intervention**

(8) Si le tribunal conclut que l'enfant a besoin de protection, mais qu'il n'est pas convaincu qu'une ordonnance soit nécessaire pour protéger l'enfant à l'avenir, il ordonne que l'enfant demeure auprès de la personne qui en était responsable immédiatement avant l'intervention prévue à la présente partie ou lui soit rendu.

## **Aucune ordonnance si l'enfant n'est pas soumis à l'autorité parentale**

(9) Si le tribunal conclut que l'enfant qui n'était pas soumis à l'autorité parentale immédiatement avant l'intervention prévue sous le régime de la présente partie du fait qu'il s'y était soustrait ou qui se soustrait à l'autorité parentale après une telle intervention a besoin de protection, mais qu'il n'est pas convaincu qu'une ordonnance du tribunal soit nécessaire pour protéger l'enfant à l'avenir, il ne rend aucune ordonnance à l'égard de l'enfant.

## **Ordonnance de garde**

99 (1) Sous réserve du paragraphe (6), si le tribunal conclut qu'une ordonnance prévue au présent article, plutôt qu'une ordonnance prévue au paragraphe 98 (1), serait dans l'intérêt véritable de l'enfant, il peut rendre une ordonnance accordant la garde de l'enfant à une ou à plusieurs personnes, à l'exception d'un parent de famille d'accueil de l'enfant, si la ou les personnes y consentent.

## **Ordonnance réputée rendue en vertu de l'article 28 de la Loi portant réforme du droit de l'enfance**

(2) L'ordonnance rendue en vertu du paragraphe (1) et toute ordonnance de visite rendue en même temps en vertu de l'article 101 sont réputées être rendues en vertu de l'article 28 de la *Loi portant réforme du droit de l'enfance* et le tribunal peut faire ce qui suit :

- a) rendre en vertu du paragraphe (1) toute ordonnance qu'il peut rendre en vertu de l'article 28 de cette loi;
- b) donner les directives qu'il peut donner en vertu de l'article 34 de cette loi.

## **Ordonnance de ne pas faire**

(3) Lorsqu'il rend une ordonnance en vertu du paragraphe (1), le tribunal peut, sans qu'il soit nécessaire de présenter une requête distincte, rendre une ordonnance de ne pas faire conformément à l'article 35 de la *Loi portant réforme du droit de l'enfance*.

## **Ordonnance réputée être définitive conformément à l'article 35 de la Loi portant réforme du droit de l'enfance**

(4) L'ordonnance rendue en vertu du paragraphe (3) est réputée être une ordonnance définitive rendue conformément à l'article 35 de la *Loi portant réforme du droit de l'enfance*, à tous égards, comme si elle avait été rendue conformément à cet article.

## **Appel des ordonnances en vertu de l'article 118**

(5) Malgré les paragraphes (2) et (4), l'ordonnance rendue en vertu du paragraphe (1) ou (3) et toute ordonnance de visite rendue en vertu de l'article 101 en même temps qu'une ordonnance rendue en vertu du paragraphe (1) sont des ordonnances rendues sous le régime de la présente partie aux fins d'interjeter appel de ces ordonnances en vertu de l'article 118.

## **Conflit de lois**

(6) Aucune ordonnance ne doit être rendue en vertu du présent article si, selon le cas :

- a) une ordonnance accordant la garde de l'enfant a été rendue en vertu de la *Loi sur le divorce* (Canada);
- b) dans le cas d'une ordonnance qui serait rendue par la Cour de justice de l'Ontario, elle serait incompatible avec une ordonnance rendue par une cour supérieure.

## **Application du paragraphe 98 (3)**

(7) Le paragraphe 98 (3) s'applique aux fins du présent article.

## **Effet de l'instance relative à la garde**

100 L'instance qui est introduite ou l'ordonnance portant sur les soins, la garde ou la surveillance d'un enfant qui est rendue sous le régime de la présente partie a pour effet de surseoir à toute instance relative à la garde du même enfant ou au droit de visiter cet enfant qui est introduite sous le régime de la *Loi portant réforme du droit de l'enfance*, sauf autorisation du tribunal dans cette dernière instance.

## **Ordonnance de visite**

101 (1) Le tribunal peut, dans l'intérêt véritable de l'enfant :

- a) soit lorsqu'il rend une ordonnance sous le régime de la présente partie;
- b) soit à la suite de la requête visée au paragraphe (2),

## Enfant confié aux soins d'une société de façon provisoire

2. Une ordonnance pour que l'enfant soit confié aux soins et à la garde d'une société de façon provisoire pendant une période précise ne dépassant pas 12 mois.

## Enfant confié aux soins d'une société de façon prolongée

3. Une ordonnance pour que l'enfant soit confié aux soins d'une société de façon prolongée jusqu'à la révocation de l'ordonnance en vertu de l'article 113 ou jusqu'à son expiration en vertu de l'article 120.

## Ordonnances consécutives : soins et garde de façon provisoire

4. Une ordonnance pour que l'enfant soit confié aux soins et à la garde d'une société de façon provisoire en application de la disposition 2 pour une période précise, puis rendu à un parent ou à une autre personne en application de la disposition 1, pour une ou des périodes ne dépassant pas en tout 12 mois.

## Renseignements exigés par le tribunal

- (2) Lorsqu'il décide de l'ordonnance à rendre en vertu du paragraphe (1) ou de l'article 99, le tribunal demande aux parties quels efforts la société, un autre organisme ou une personne la société ou une autre personne ou entité a faits pour aider l'enfant avant l'intervention prévue à la présente partie.

## Mesures moins perturbatrices

- (3) Le tribunal ne doit pas rendre une ordonnance retirant l'enfant des soins de la personne qui en était responsable immédiatement avant l'intervention prévue à la présente partie, à moins qu'il ne soit convaincu que des mesures moins perturbatrices pour l'enfant, y compris la prestation de soins hors établissement et l'aide visée au paragraphe (2), seraient inadéquates pour assurer la protection de l'enfant.

## Placement en milieu communautaire

- (4) Si le tribunal décide qu'il est nécessaire de retirer l'enfant des soins de la personne qui en était responsable immédiatement avant l'intervention prévue à la présente partie, il doit, avant de rendre une ordonnance en vertu de la disposition 2 ou 3 du paragraphe (1), étudier s'il est possible de placer l'enfant, en vertu de la disposition 1 du paragraphe (1), auprès d'un membre de la parenté, d'un voisin ou d'un autre membre de sa communauté ou de sa famille élargie, avec le consentement de la personne auprès de qui l'enfant serait placé.

## Enfant inuit, métis ou de Premières Nations

- (5) Si l'enfant visé au paragraphe (4) est un enfant inuit, métis ou de Premières Nations, le tribunal, sauf s'il existe une raison importante pour placer l'enfant ailleurs, le place auprès d'un membre de sa famille élargie si cela est possible, sinon :

- a) dans le cas d'un enfant de Premières Nations, auprès d'une autre famille de Premières Nations;

- b) dans le cas d'un enfant inuit, auprès d'une autre famille inuite;

- c) dans le cas d'un enfant métis, auprès d'une autre famille métisse.

## Autre audience avec avis d'ordonnance ayant pour effet de confier l'enfant aux soins d'une société de façon provisoire ou prolongée

- (6) Si le tribunal a permis de passer outre à la remise d'un avis à une personne en vertu du paragraphe 78 (7), il ne doit pas rendre une ordonnance ayant pour effet de confier l'enfant aux soins d'une société de façon provisoire en vertu de la disposition 2 du paragraphe (1) pour une période dépassant 30 jours ou une ordonnance ayant pour effet de confier l'enfant aux soins d'une société de façon prolongée en vertu de la disposition 3 du paragraphe (1) tant qu'une autre audience prévue au paragraphe 87 (1) n'a pas été tenue après la remise de l'avis à cette personne.

## Ordonnance de surveillance assortie de conditions

- (7) S'il rend une ordonnance de surveillance en vertu de la disposition 1 du paragraphe (1), le tribunal peut imposer, a) des conditions raisonnables relativement à la surveillance de l'enfant et aux soins à lui donner;

- b) des conditions raisonnables aux personnes suivantes,

- (i) un parent de l'enfant,

- (ii) la personne aux soins et à la garde de laquelle l'enfant sera confié en application de l'ordonnance,

- (iii) l'enfant,

- (iv) toute autre personne, à l'exception d'un parent de famille d'accueil, qui propose un programme de soins et de garde ou un programme de droit de visite à l'égard de l'enfant ou qui participerait à un tel programme;

- c) des conditions raisonnables à la société qui surveillera le placement, sans toutefois exiger qu'elle fournisse une aide financière ou qu'elle achète des biens ou des services.



## Refus de se soumettre à l'évaluation

(13) Si une personne refuse de se soumettre à l'évaluation ordonnée en vertu du paragraphe (1), le tribunal peut en tirer les conclusions qu'il estime raisonnables.

## Rapport inadmissible

(14) Le rapport de l'évaluation ordonnée en vertu du paragraphe (1) n'est pas admissible en preuve dans une autre instance, si ce n'est, selon le cas :

a) une instance prévue par la présente partie, notamment un appel interjeté en vertu de l'article 118;

b) une instance visée à l'article 134;

c) une instance prévue par la partie VIII (Adoption et délivrance de permis relatifs à l'adoption) et ayant trait à une requête en vue d'obtenir, de modifier ou de révoquer une ordonnance de communication;

d) une instance prévue par la *Loi sur les coroners*,

sans le consentement de la ou des personnes ayant fait l'objet de l'évaluation.

## Ordonnance rendue avec consentement : exigences particulières

96 Si un enfant est amené devant le tribunal de la manière décrite à l'alinéa 73 (2) n), le tribunal, avant de rendre une ordonnance en vertu de l'article 98 ou 99 portant sur le retrait de l'enfant des soins et de la garde du parent :

a) demande si :

(i) la société a offert au parent et à l'enfant des services qui permettraient à l'enfant de demeurer auprès du parent, (ii) le parent et l'enfant, s'il a 12 ans ou plus, ont consulté un avocat indépendant au sujet du consentement;

b) doit être convaincu que :

(i) le parent et l'enfant, s'il a 12 ans ou plus, comprennent la nature et les conséquences du consentement, (ii) chaque consentement est volontaire,

(iii) le parent et l'enfant, s'il a 12 ans ou plus, consentent à ce que l'ordonnance soit demandée.

## Programme établi par la société

97 Avant de rendre une ordonnance en vertu de l'article 98, 99, 111 ou 113, le tribunal obtient et étudie le programme de soins à fournir à l'enfant qu'il a élaboré par écrit la société. Le programme doit notamment comprendre :

a) la description des services à fournir afin de remédier aux conditions ou situations qui ont donné naissance, selon le tribunal, au besoin de protection;

b) un énoncé des critères sur lesquels la société se fondera pour fixer le moment où ses soins ou sa surveillance ne s'imposeront plus;

c) la période approximative requise pour que la société atteigne ses buts en ce qui concerne l'enfant;

d) si la société propose de retirer ou a retiré l'enfant des soins d'une personne :

(i) une explication des raisons pour lesquelles l'enfant ne peut être convenablement protégé s'il demeure confié aux soins de cette personne et une description des efforts antérieurs faits en ce sens, le cas échéant,

(ii) une description des efforts, le cas échéant, qui sont prévus pour que l'enfant reste en contact avec cette personne;

e) si la société propose de retirer ou a retiré, de façon permanente, l'enfant des soins d'une personne, une description des mesures déjà prises ou en train d'être prises pour assurer le placement stable et à long terme de l'enfant;

f) une description des mesures déjà prises ou en train d'être prises pour reconnaître l'importance de la culture de l'enfant et préserver son patrimoine, ses traditions et son identité culturelle.

## Ordonnance portant sur la protection de l'enfant

98 (1) Si le tribunal, d'une part, conclut qu'un enfant a besoin de protection et, d'autre part, est convaincu qu'une ordonnance est nécessaire afin de protéger l'enfant à l'avenir, il rend l'une ou l'autre des ordonnances suivantes ou une ordonnance prévue à l'article 99 dans l'intérêt véritable de l'enfant :

## Surveillance

1. Une ordonnance pour que l'enfant soit confié aux soins et à la garde d'un parent ou d'une autre personne, sous réserve de la surveillance par la société, pendant une période précise comprise entre 3 et 12 mois.

- a) d'une part, qu'il est nécessaire qu'une ou plusieurs des personnes visées au paragraphe (1) se soumettent à une évaluation pour qu'il puisse rendre une décision sous le régime de la présente partie;
- b) d'autre part, que les éléments de preuve recherchés lors de l'évaluation ne sont pas par ailleurs à la disposition du tribunal.

#### **Évaluateur choisi par les parties**

- (3) L'ordonnance rendue en vertu du paragraphe (1) précise le délai dans lequel les parties à l'instance peuvent choisir l'évaluateur et communiquer son nom au tribunal.

#### **Nomination de l'évaluateur choisi par les parties**

- (4) Le tribunal nomme l'évaluateur choisi par les parties s'il est convaincu que cette personne satisfait aux critères suivants :
  - 1. Elle possède les compétences pour effectuer soit une évaluation d'ordre médical, affectif, psychologique, scolaire ou social, soit une évaluation du développement.
  - 2. Elle a accepté d'effectuer l'évaluation.

#### **Nomination d'un évaluateur qui n'est pas choisi par les parties**

- (5) S'il est d'avis que la personne choisie par les parties en vertu du paragraphe (3) ne satisfait pas aux critères énoncés au paragraphe (4), le tribunal choisit et nomme une autre personne qui satisfait à ces critères.

#### **Règlements**

- (6) L'ordonnance rendue en vertu du paragraphe (1) et l'évaluation qu'elle exige doivent être conformes aux exigences prescrites.

#### **Rapport**

- (7) L'évaluateur présente au tribunal son rapport écrit de l'évaluation visée au paragraphe (1) dans le délai précisé dans l'ordonnance. Ce délai ne doit pas dépasser 30 jours, sauf si le tribunal est d'avis qu'une période d'évaluation plus longue est nécessaire.

#### **Copies du rapport**

- (8) Sept jours au moins avant l'étude, par le tribunal, du rapport à l'audience, le tribunal ou la partie qui a demandé l'évaluation, s'il y a lieu, fournit une copie du rapport aux personnes suivantes :

- a) la personne qui a fait l'objet de l'évaluation, sous réserve des paragraphes (9) et (10);

- b) l'avocat ou le mandataire de l'enfant;

- c) le parent qui comparait à l'audience, ou son avocat;

- d) la société qui fournit des soins à l'enfant ou le surveille;

- e) le directeur, s'il en fait la demande;

- f) dans le cas d'un enfant inuit, métis ou de Premières Nations, les personnes visées aux alinéas a), b), c), d) et e) et le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient;

- g) quiconque devrait, de l'avis du tribunal, en recevoir une copie aux fins du cas.

#### **Enfant de moins de 12 ans**

- (9) L'enfant de moins de 12 ans qui fait l'objet d'une évaluation ne doit pas recevoir de copie du rapport, à moins que le tribunal ne décide que cela est souhaitable.

#### **Enfant de 12 ans ou plus**

- (10) L'enfant de 12 ans ou plus qui fait l'objet d'une évaluation reçoit une copie du rapport, à moins que le tribunal ne soit convaincu que la divulgation de tout ou partie du rapport lui causerait des maux affectifs, auquel cas il peut refuser de lui communiquer tout ou partie du rapport.

#### **Incompatibilité**

- (11) Les paragraphes (9) et (10) s'appliquent sur toute disposition de la Loi de 2004 sur la protection des renseignements personnels sur la santé.

#### **Évaluation comme preuve**

- (12) Le rapport de l'évaluation ordonnée en vertu du paragraphe (1) constitue une preuve et fait partie du dossier de l'instance.

## Droit de visite

(8) L'ordonnance rendue en vertu de l'alinéa (2) c) ou d) peut comprendre des dispositions portant sur le droit d'une personne de visiter l'enfant aux conditions que le tribunal estime appropriées.

## Modification de l'ordonnance

(9) Le tribunal peut à tout moment modifier ou révoquer une ordonnance rendue en vertu du paragraphe (2).

## Preuve

(10) Pour l'application du présent article, le tribunal peut accepter les preuves qu'il juge dignes de foi et sûres dans les circonstances.

## Opinion et désirs de l'enfant

(11) Avant de rendre une ordonnance en vertu du paragraphe (2), le tribunal prend dûment en considération l'opinion et les désirs de l'enfant eu égard à son âge et à son degré de maturité, sauf s'ils ne peuvent être établis.

## Usage des méthodes prescrites de règlement extrajudiciaire des différends

92 À n'importe quelle étape d'une instance introduite sous le régime de la présente partie, le tribunal peut, dans l'intérêt véritable de l'enfant et avec le consentement des parties, ajourner l'instance pour permettre aux parties de tenter de régler, au moyen d'une méthode prescrite de règlement extrajudiciaire des différends, tout différend qui les oppose à l'égard d'une question en lien avec l'instance.

## Retard : date fixée par le tribunal

93 Si une requête est présentée en vertu du paragraphe 80 (1) ou que le tribunal est saisi d'une question visant à établir si un enfant a besoin de protection et qu'aucune décision à cet égard n'a été prise dans les trois mois de l'introduction de l'instance, le tribunal :

- a) doit fixer, par ordonnance, une date pour entendre la requête, cette date pouvant être la date la plus rapprochée de nature à permettre le juste règlement de la requête;
- b) peut donner les directives et rendre les ordonnances relatives à l'instance qui sont justes.

## Motifs

94 (1) S'il rend une ordonnance sous le régime de la présente partie, le tribunal donne :

- a) un énoncé des conditions dont l'ordonnance est assortie;
- b) un énoncé de chacun des programmes de soins à fournir à l'enfant qui lui ont été proposés;
- c) un énoncé du programme de soins à fournir à l'enfant que le tribunal précise dans sa décision;
- d) les motifs de sa décision, notamment :

- (i) un bref exposé des éléments de preuve sur lesquels il fonde sa décision,
- (ii) si l'ordonnance a pour effet de retirer l'enfant des soins de la personne qui en était responsable immédiatement avant l'intervention prévue sous le régime de la présente partie, un énoncé des motifs pour lesquels l'enfant ne peut pas être convenablement protégé s'il est confié aux soins de cette personne.

## Aucune obligation d'identifier la personne ou d'indiquer le lieu

(2) L'alinéa (1) b) n'exige pas que le tribunal identifie la personne auprès de qui l'enfant serait placé ni le lieu où il est proposé de le placer pour qu'il reçoive des soins et fasse l'objet d'une surveillance.

## EVALUATIONS

## Ordonnance d'évaluation

95 (1) Dans le cadre d'une instance introduite sous le régime de la présente partie, le tribunal peut ordonner à une ou plusieurs des personnes suivantes de se soumettre, dans un délai précis, à une évaluation par une personne nommée conformément aux paragraphes (3) et (4) :

- 1. L'enfant.
- 2. Un parent de l'enfant.
- 3. Toute autre personne, à l'exception d'un parent de famille d'accueil, qui propose un programme de soins et de garde ou un programme de droit de visite à l'égard de l'enfant ou qui participerait à un tel programme.

## Conditions : ordonnance d'évaluation

(2) Le tribunal peut ordonner une évaluation s'il est convaincu :



- a) d'une part, le tribunal peut tenir compte de la conduite antérieure d'une personne envers un enfant, si le soin de l'enfant qui fait l'objet de l'instance lui est ou peut lui être confié ou si la personne a ou peut avoir le droit de visiter l'enfant;
- b) d'autre part, sont admissibles en preuve les déclarations ou rapports, oraux ou écrits, y compris une transcription, une pièce, une conclusion ou les motifs d'une décision issue d'une instance antérieure, civile ou criminelle, que le tribunal juge pertinents.

#### **Preuve : règlement et décision**

(2) Lors de l'audience visée au paragraphe 87 (1), la preuve ne portant que sur le règlement de l'affaire ne doit pas être prise en compte pour établir si l'enfant a besoin de protection.

#### **Ajournement**

- 91 (1) Le tribunal ne doit pas ajourner une audience pendant plus de 30 jours :
- a) sauf si toutes les parties présentes et la personne à qui sera confié le soin de l'enfant pendant l'ajournement y consentent;
  - b) si le tribunal sait qu'une partie qui n'assiste pas à l'audience s'oppose à un ajournement plus long.

#### **Garde de l'enfant pendant l'ajournement**

(2) Si l'audience est ajournée, le tribunal rend une ordonnance provisoire en matière de soins et de garde qui prévoit que l'enfant :

- a) reste ou est rendu aux soins et à la garde de la personne qui en était responsable immédiatement avant l'intervention prévue sous le régime de la présente partie;
- b) reste ou est rendu aux soins et à la garde de la personne visée à l'alinéa a), sous réserve de la surveillance par la société et aux conditions raisonnables que le tribunal estime appropriées;
- c) est confié aux soins et à la garde d'une personne autre que celle visée à l'alinéa a), avec le consentement de cette autre personne, sous réserve de la surveillance par la société et aux conditions raisonnables que le tribunal estime appropriées;
- d) reste ou est confié aux soins et à la garde de la société, mais qu'il ne doit pas être placé dans un lieu de détention provisoire ou dans un lieu de garde en milieu ouvert ou en milieu fermé.

#### **Enfant faisant l'objet d'une ordonnance extraprovinciale**

(3) Si un tribunal rend une ordonnance en vertu de l'alinéa (2) d) dans le cas d'un enfant qui fait l'objet d'une ordonnance extraprovinciale de protection d'un enfant, la société peut, pendant la période d'ajournement, rendre l'enfant aux soins et à la garde de l'organisme chargé du bien-être des enfants ou de toute autre personne nommée dans l'ordonnance.

#### **Facteurs**

(4) Le tribunal ne doit pas rendre d'ordonnance en vertu de l'alinéa (2) c) ou d), sauf s'il est convaincu qu'il existe des motifs raisonnables de croire que l'enfant risque vraisemblablement de subir des maux et qu'il ne peut pas être convenablement protégé par l'ordonnance visée à l'alinéa (2) a) ou b).

#### **Placement auprès d'un membre de la parenté ou d'une autre personne**

(5) Avant de rendre une ordonnance provisoire en matière de soins et de garde en vertu de l'alinéa (2) d), le tribunal examine s'il est dans l'intérêt véritable de l'enfant de rendre une ordonnance en vertu de l'alinéa (2) c) qui vise à le confier aux soins et à la garde d'une personne qui est un membre de sa parenté, de sa famille élargie ou de sa communauté.

#### **Conditions imposées par l'ordonnance**

(6) L'ordonnance provisoire en matière de soins et de garde d'un enfant prévue à l'alinéa (2) b) ou c) peut imposer :

- a) des conditions raisonnables relativement à la surveillance de l'enfant et aux soins à lui donner;
- b) des conditions raisonnables au parent de l'enfant, à la personne aux soins et à la garde de laquelle l'enfant sera confié en application de l'ordonnance, à l'enfant et à toute autre personne, à l'exception d'un parent de famille d'accueil, qui propose un programme de soins et de garde ou un programme de droit de visite à l'égard de l'enfant ou qui participerait à un tel programme;
- c) des conditions raisonnables à la société qui surveillera le placement, sans toutefois exiger qu'elle fournisse une aide financière ou qu'elle achète des biens ou des services.

#### **Application de l'article 107**

(7) Si le tribunal rend une ordonnance en vertu de l'alinéa (2) d), l'article 107 (enfant confié aux soins d'une société de façon provisoire) s'applique avec les adaptations nécessaires.

### Restriction relative au délai dans un lieu sûr : enfant de 16 ou 17 ans

- (d) une entente relative à des soins temporaires doit être conclue en vertu du paragraphe 74 (1);
- (e) une entente doit être conclue en vertu de l'article 76 (ententes avec des jeunes de 16 et 17 ans).

**86.1** Aussitôt que la chose peut se faire et, en tout état de cause, dans les cinq jours suivant le jour où l'enfant de 16 ou 17 ans est amené, avec son consentement, dans un lieu sûr en vertu de l'article 80.1 :

- (a) un tribunal doit être saisi de l'affaire afin que soit tenue l'audience prévue au paragraphe 87 (1);

(b) l'enfant doit être rendu à la personne à qui l'ordonnance rendue en vertu de la présente partie reconnaît le droit d'avoir la garde de l'enfant.

### Audience portant sur la protection de l'enfant

**87 (1)** Si une requête est présentée en vertu du paragraphe 80 (1) ou que le tribunal est saisi d'une question visant à établir si un enfant a besoin de protection, le tribunal tient une audience afin de trancher cette question et rend une ordonnance en vertu de l'article 98.

### Nom et âge de l'enfant

(2) Aussitôt que la chose peut se faire et, en tout état de cause, avant de décider si l'enfant a besoin de protection, le tribunal établit, en ce qui concerne l'enfant :

- (a) son nom et son âge;

(b) si celui-ci est un enfant inuit, métis ou de Premières Nations et, le cas échéant, les bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient;

- (c) si celui-ci a été amené dans un lieu sûr avant l'audience, l'emplacement du lieu d'où il a été retiré.

### Territoire de compétence

**88 (1)** La définition qui suit s'applique au présent article.

«territoire de compétence» S'entend du territoire sur lequel une société exerce sa compétence en application du paragraphe 33 (1).

### Lieu de l'audience

(2) L'audience tenue sous le régime de la présente partie a lieu dans le territoire de compétence où l'enfant réside habituellement. Toutefois :

- (a) si l'enfant est amené dans un lieu sûr avant l'audience, l'audience se tient dans le territoire de compétence où se trouve le lieu d'où l'enfant a été retiré;

(b) si l'enfant est confié aux soins d'une société soit de façon provisoire en application d'une ordonnance rendue en vertu de la disposition 2 ou 4 du paragraphe 98 (1), soit de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c), l'audience se tient dans le territoire de compétence de la société;

- (c) si l'enfant fait l'objet d'une ordonnance de surveillance par la société rendue en vertu de la disposition 1 du paragraphe 98 (1) ou de l'alinéa 113 (1) a), l'audience peut se tenir dans le territoire de compétence de la société ou dans celui où réside le parent ou l'autre personne auprès de qui l'enfant est placé.

### Renvoi de l'instance

(3) S'il est convenu à une étape quelconque d'une instance introduite sous le régime de la présente partie qu'il serait plus pratique d'instruire l'instance dans un autre territoire de compétence, le tribunal peut ordonner le renvoi de l'instance dans cet autre territoire, auquel cas l'instance continue d'être instruite comme si elle avait été introduite dans ce territoire.

### Ordonnances relatives aux sociétés

(4) Le tribunal ne doit rendre une ordonnance confiant un enfant aux soins ou à la surveillance d'une société que si le lieu où il siège se trouve dans le territoire de compétence de la société.

### Pouvoir du tribunal

**89** Le tribunal peut, de sa propre initiative, assigner une personne à comparaître devant lui, à témoigner et à produire tout document ou objet. Il peut faire exécuter l'assignation comme si elle avait été délivrée dans une instance introduite en vertu de la Loi sur le droit de la famille.

### Preuve

### Conduite antérieure envers des enfants

**90 (1)** Malgré toute disposition de la Loi sur la preuve, dans une instance introduite sous le régime de la présente partie :

«médias» S'entend de la presse, de la radio et de la télévision.

#### Champ d'application

(2) Le présent article s'applique aux audiences tenues sous le régime de la présente partie, à l'exclusion de celles visées à l'article 131 (registre des mauvais traitements infligés aux enfants).

#### Lieu d'une audience

(3) L'audience est tenue séparément des audiences tenues dans le cadre d'instances criminelles.

#### Huis clos sauf avis contraire du tribunal

(4) L'audience se tient à huis clos, sous réserve du paragraphe (5), sauf si le tribunal ordonne qu'elle soit publique après avoir étudié à la fois :

- a) les désirs et les intérêts des parties;
- b) la question de savoir si la présence du public causerait des maux affectifs à l'enfant qui témoigne, qui participe à l'audience ou qui fait l'objet de l'instance.

#### Participation des représentants des médias

(5) Des représentants des médias, choisis conformément au paragraphe (6), peuvent assister à l'audience tenue à huis clos, à moins que le tribunal ne rende l'ordonnance d'exclusion prévue au paragraphe (7).

#### Sélection des représentants des médias

(6) Les représentants des médias qui peuvent assister à l'audience tenue à huis clos sont choisis de la manière suivante :

- 1. Les représentants des médias qui sont sur place ne peuvent choisir que deux personnes au maximum parmi eux.
- 2. S'ils ne sont pas en mesure de s'entendre sur le choix de ces deux personnes, le tribunal peut choisir les deux représentants qui peuvent assister à l'audience.
- 3. Le tribunal peut autoriser la présence de représentants supplémentaires.

#### Ordonnance d'exclusion ou de non-publication

(7) S'il est d'avis que la présence du ou des représentants des médias ou que la publication du rapport, selon le cas, causerait des maux affectifs à l'enfant qui témoigne, qui participe à l'audience ou qui fait l'objet de l'instance, le tribunal peut rendre une ordonnance qui :

- a) soit exclut un représentant particulier des médias de tout ou partie de l'audience;
- b) soit exclut tous les représentants des médias de tout ou partie de l'audience;
- c) soit interdit la publication d'un rapport de l'audience ou d'une partie précise de celle-ci.

#### Interdiction : identification d'un enfant

(8) Nul ne doit publier, ni rendre publics des renseignements ayant pour effet d'identifier un enfant qui témoigne, qui participe à une audience ou qui fait l'objet d'une instance, ou un parent ou un parent de famille d'accueil de cet enfant ou un membre de la famille de cet enfant.

#### Interdiction : identification d'une personne accusée

(9) Le tribunal peut rendre une ordonnance interdisant la publication de renseignements ayant pour effet d'identifier une personne accusée d'une infraction à la présente partie.

#### Transcription

(10) Sauf décision contraire du tribunal, aucune copie de la transcription de l'audience ne doit être donnée à qui que ce soit, à l'exception d'une partie ou de son avocat.

#### Séjour limité dans un lieu sûr

86 Aussitôt que la chose peut se faire et, en tout état de cause, dans les cinq jours suivant le jour où l'enfant est amené dans un lieu sûr en application de l'article 80, du sous-alinéa 81 (1) a) (iii) ou du paragraphe 133 (5), l'une ou l'autre des mesures suivantes doit être prise :

- a) un tribunal doit être saisi de l'affaire afin que soit tenue l'audience prévue au paragraphe 87 (1) (audience portant sur la protection de l'enfant);
- b) l'enfant doit être rendu à la dernière personne qui en avait la responsabilité ou, si une ordonnance portant sur la garde de l'enfant est exécutoire en Ontario, à la personne à qui l'ordonnance reconnaît le droit d'avoir la garde de l'enfant;
- c) l'enfant qui fait l'objet d'une ordonnance extraprovinciale de protection d'un enfant doit être rendu à l'organisme chargé du bien-être des enfants ou à toute autre personne nommée dans l'ordonnance;



## Caractère plus approprié d'une ordonnance visant à faire respecter les droits de garde

(5) Le juge de paix ne doit pas décerner un mandat en vertu du paragraphe (1) à l'égard de l'enfant qui s'est soustrait aux soins et à la surveillance d'une personne s'il serait plus approprié d'introduire une instance en vertu de l'article 36 de la Loi portant réforme du droit de l'enfance.

## Aucune obligation de préciser les locaux

(6) Il n'est pas nécessaire, dans le mandat prévu au paragraphe (1), de préciser les locaux où se trouve l'enfant.

## Procédure de protection de l'enfant

(7) Si un agent de la paix ou un préposé à la protection de l'enfance croit, en se fondant sur des motifs raisonnables et probables, qu'un enfant appréhende en vertu du présent article a besoin de protection et que sa santé ou sa sécurité risquerait vraisemblablement d'être compromise s'il était rendu à la personne qui en prend soin et le surveille :

a) l'agent ou le préposé peut amener l'enfant dans un lieu sûr en vertu du paragraphe 80 (7);

b) si l'enfant a été amené dans un lieu sûr en vertu du paragraphe (1), il est traité comme s'il y avait été amené en vertu du paragraphe 80 (7).

## Procédure de protection de l'enfant

(7) Si un agent de la paix ou un préposé à la protection de l'enfance croit, en se fondant sur des motifs raisonnables et probables, qu'un enfant amené dans un lieu sûr en vertu du présent article a besoin de protection et que sa santé ou sa sécurité risquerait vraisemblablement d'être compromise s'il était rendu à la personne qui en prend soin et le surveille :

a) l'agent ou le préposé peut amener l'enfant dans un lieu sûr en vertu du paragraphe 80 (7);

b) si l'enfant a été amené dans un lieu sûr en vertu du paragraphe (4), il est réputé avoir été amené dans ce lieu en vertu du paragraphe 80 (7).

## Pouvoir d'entrer dans des locaux

84 (1) La personne autorisée par un mandat décerné en vertu du paragraphe 81 (1) ou 83 (1) à amener un enfant dans un lieu sûr peut à tout moment entrer, en employant la force si cela est nécessaire, dans les locaux précisés dans le mandat, y rechercher l'enfant et l'en retirer.

## Droit d'entrer

(2) La personne autorisée en vertu du paragraphe 81 (4) ou 82 (1) qui croit, en se fondant sur des motifs raisonnables et probables, qu'un enfant visé au paragraphe pertinent se trouve dans des locaux peut, sans mandat, y entrer, en employant la force si cela est nécessaire, y rechercher l'enfant et l'en retirer.

## Conformité aux règlements

(3) La personne autorisée à entrer dans des locaux en vertu du présent article exerce ce pouvoir conformément aux règlements.

## Aide de la police

(4) Le préposé à la protection de l'enfance qui agit dans le cadre de l'article 81 ou 83 peut demander l'aide d'un agent de la paix.

## Examen de l'enfant

(5) Le préposé à la protection de l'enfance qui s'occupe d'un enfant en vertu du paragraphe 82 (3) ou 83 (4) comme si l'enfant avait été amené dans un lieu sûr peut autoriser l'examen médical d'un enfant si le consentement d'un parent serait normalement exigé.

## Consentement : examen de l'enfant

(5) Si le paragraphe 82 (3) ou 83 (4) s'applique à un enfant amené dans un lieu sûr, un préposé à la protection de l'enfance peut autoriser l'examen médical de l'enfant si le consentement d'un parent serait normalement exigé.

## Immunité

(6) Sont irrecevables les actions intentées contre un agent de la paix ou un préposé à la protection de l'enfance pour un acte accompli de bonne foi dans l'exercice effectif ou censé tel des fonctions que lui attribue le présent article ou l'article 81, 82 ou 83 ou pour une négligence ou un manquement qu'il aurait commis dans l'exercice de bonne foi de ces fonctions.

## AUDIENCES ET ORDONNANCES

## Procédure : audiences

## Définition

85 (1) La définition qui suit s'applique au présent article.

### Cas où l'enfant n'est pas rendu dans les 12 heures

(3) Si un enfant a été rendu à son parent ou à la personne qui en est responsable dans les 12 heures de son arrivée au lieu sûr, il est réputé avoir été amené dans un lieu sûr en vertu du paragraphe (1).  
 (4) Si un enfant a été rendu à son parent ou à la personne qui en est responsable dans les 12 heures de son arrivée au lieu sûr, il est traité comme s'il avait été amené dans un lieu sûr en vertu du paragraphe (1).

### Cas où l'enfant n'est pas rendu dans les 12 heures

(3) Si un enfant a été rendu à son parent ou à la personne qui en est responsable dans les 12 heures de son arrivée au lieu sûr, il est réputé avoir été amené dans un lieu sûr en vertu du paragraphe (1).  
 (4) Si un enfant a été rendu à son parent ou à la personne qui en est responsable dans les 12 heures de son arrivée au lieu sûr, il est traité comme s'il avait été amené dans un lieu sûr en vertu du paragraphe (1).

### Enfants qui se soustraient aux soins des parents

#### Mandat d'amener un enfant

83 (1) Un juge de paix peut décerner un mandat autorisant un agent de la paix ou un préposé à la protection de l'enfance à appréhender un enfant s'il est convaincu, d'après une dénonciation faite sous serment par une personne, de ce qui suit :

a) l'enfant a moins de 16 ans;

b) l'enfant s'est soustrait aux soins et à la surveillance de la personne sans son consentement;

c) la personne croit, en se fondant sur des motifs raisonnables et probables, que la santé ou la sécurité de l'enfant risque d'être compromise s'il n'est pas appréhendé.

#### Enfant rendu ou amené dans un lieu sûr

(2) La personne qui appréhende un enfant en vertu du paragraphe (1) le rend à la personne qui en prend soin et le surveille aussitôt que la chose peut se faire. S'il n'est pas possible de le faire dans un délai raisonnable, la personne amène l'enfant dans un lieu sûr.

#### Avis à la personne qui prend soin de l'enfant, le garde ou le surveille

(3) Le responsable du lieu sûr où l'enfant est amené en application du paragraphe (2) fait des efforts raisonnables pour aviser la personne qui prend soin de l'enfant et le surveille de la présence de l'enfant dans le lieu sûr de sorte qu'il puisse lui être rendu.

### Cas où l'enfant n'est pas rendu dans les 12 heures

(4) Si un enfant a été rendu à son parent ou à la personne qui en prend soin et le surveille dans les 12 heures de son arrivée au lieu sûr, il est traité comme s'il avait été amené dans un lieu sûr en vertu du paragraphe (1).  
 (5) Si un enfant a été rendu à son parent ou à la personne qui en prend soin et le surveille dans les 12 heures de son arrivée au lieu sûr, il est traité comme s'il avait été amené dans un lieu sûr en vertu du paragraphe (1).

### Enfants qui se soustraient aux soins des parents

#### Mandat d'amener un enfant dans un lieu sûr

83 (1) Un juge de paix peut décerner un mandat autorisant un agent de la paix ou un préposé à la protection de l'enfance à amener un enfant dans un lieu sûr s'il est convaincu, d'après une dénonciation faite sous serment par une personne, de ce qui suit :

a) l'enfant a moins de 16 ans;

b) l'enfant s'est soustrait aux soins et à la surveillance de la personne sans son consentement;

c) la personne croit, en se fondant sur des motifs raisonnables et probables, que la santé ou la sécurité de l'enfant risque d'être compromise s'il n'est pas amené dans un lieu sûr.

#### Enfant rendu ou amené dans un lieu sûr

(2) La personne qui agit dans le cadre d'un mandat décerné en vertu du paragraphe (1) le rend à la personne qui en prend soin et le surveille aussitôt que la chose peut se faire. S'il n'est pas possible de le faire dans un délai raisonnable, la personne amène l'enfant dans un lieu sûr.

#### Avis à la personne qui prend soin de l'enfant, le garde ou le surveille

(3) Le responsable du lieu sûr où l'enfant est amené en application du paragraphe (2) fait des efforts raisonnables pour aviser la personne qui prend soin de l'enfant et le surveille de la présence de l'enfant dans le lieu sûr de sorte qu'il puisse lui être rendu.

### Cas où l'enfant n'est pas rendu dans les 12 heures

(4) Si un enfant a été rendu à son parent ou à la personne qui en prend soin et le surveille dans les 12 heures de son arrivée au lieu sûr, il est réputé avoir été amené dans un lieu sûr en vertu du paragraphe (1).  
 (5) Si un enfant a été rendu à son parent ou à la personne qui en prend soin et le surveille dans les 12 heures de son arrivée au lieu sûr, il est traité comme s'il avait été amené dans un lieu sûr en vertu du paragraphe (1).

## Enfant qui s'est soustrait ou a été soustrait à des soins amené dans un lieu sûr

### Avec mandat

81 (1) Un juge de paix peut décerner un mandat autorisant un préposé à la protection de l'enfance à amener un enfant dans un lieu sûr s'il est convaincu, d'après une dénonciation faite sous serment par un préposé à la protection de l'enfance, que :

- a) d'une part, l'enfant, selon le cas :
- a) d'une part, l'enfant a été soustrait ou a été soustrait à la garde légitime et aux soins d'une société sans le consentement de celle-ci,
- (ii) fait l'objet d'une ordonnance extraprovinciale de protection d'un enfant et s'est soustrait ou a été soustrait à la garde légitime et aux soins de l'organisme chargé du bien-être des enfants ou de toute autre personne nommée dans l'ordonnance;
- b) d'autre part, il existe des motifs raisonnables et probables de croire qu'à part le fait d'amener l'enfant dans un lieu sûr, aucun autre plan d'action susceptible de protéger convenablement l'enfant n'est disponible.

### Interdiction de refuser de décerner un mandat

(2) Le juge de paix ne doit pas refuser de décerner un mandat à une personne en vertu du paragraphe (1) pour le seul motif que cette personne peut amener l'enfant dans un lieu sûr en vertu du paragraphe (4).

### Aucune obligation de préciser les locaux

(3) Il n'est pas nécessaire, dans le mandat prévu au paragraphe (1), de préciser les locaux où se trouve l'enfant.

### Sans mandat

(4) Un agent de la paix ou un préposé à la protection de l'enfance peut, sans mandat, amener l'enfant dans un lieu sûr s'il croit, en se fondant sur des motifs raisonnables et probables, que :

- a) d'une part, l'enfant, selon le cas :
- a) d'une part, l'enfant a été soustrait ou a été soustrait à la garde légitime et aux soins d'une société sans le consentement de celle-ci,
- (ii) fait l'objet d'une ordonnance extraprovinciale de protection d'un enfant et s'est soustrait ou a été soustrait à la garde légitime et aux soins de l'organisme chargé du bien-être des enfants ou de toute autre personne nommée dans l'ordonnance;
- b) d'autre part, la santé ou la sécurité de l'enfant risquerait vraisemblablement d'être compromise pendant le laps de temps nécessaire à l'obtention du mandat prévu au paragraphe (1).

### Appréhension d'un enfant de moins de 12 ans

82 (1) L'agent de la paix qui croit, en se fondant sur des motifs raisonnables et probables, qu'un enfant, réellement ou apparemment âgé de moins de 12 ans, a commis un acte pour lequel une personne de 12 ans ou plus pourrait être déclarée coupable d'une infraction peut appréhender l'enfant sans mandat. Ensuite, l'agent de la paix :

- a) aussitôt que la chose peut se faire, rend l'enfant à son parent ou à la personne qui en est responsable;
- b) s'il n'est pas possible de rendre l'enfant à son parent ou à une autre personne dans un délai raisonnable, amène l'enfant dans un lieu sûr pour qu'il y soit détenu jusqu'à ce qu'il soit possible de le rendre à son parent ou à une autre personne.

### Pouvoir d'amener un enfant de moins de 12 ans chez lui ou dans un lieu sûr

82 (1) L'agent de la paix qui croit, en se fondant sur des motifs raisonnables et probables, qu'un enfant, réellement ou apparemment âgé de moins de 12 ans, a commis un acte pour lequel une personne de 12 ans ou plus pourrait être déclarée coupable d'une infraction peut amener l'enfant dans un lieu sûr sans mandat. Ensuite, l'agent de la paix :

- a) aussitôt que la chose peut se faire, rend l'enfant à son parent ou à la personne qui en est responsable;
- b) s'il n'est pas possible de rendre l'enfant à son parent ou à une autre personne dans un délai raisonnable, amène l'enfant dans un lieu sûr jusqu'à ce qu'il soit possible de le rendre à son parent ou à une autre personne.

### Avis au parent

(2) Le responsable du lieu sûr dans lequel est détenu l'enfant en vertu du paragraphe (1) fait des efforts raisonnables pour aviser le parent de l'enfant ou la personne qui en est responsable de la détention de l'enfant de sorte que l'enfant puisse lui être rendu.



**Identification de l'enfant**

(5) Il n'est pas nécessaire, dans la requête présentée en vertu du paragraphe (1), le mandat décerné en vertu du paragraphe (2) ou l'ordonnance rendue en vertu du paragraphe (4), d'identifier l'enfant par son nom ou de préciser les locaux où il se trouve.

**Pouvoir d'entrer dans des locaux**

(6) Le préposé à la protection de l'enfance autorisé à amener l'enfant dans un lieu sûr au moyen d'un mandat décerné en vertu du paragraphe (2) ou d'une ordonnance rendue en vertu de l'alinéa (4) d) peut à tout moment entrer, en employant la force si cela est nécessaire, dans les locaux précisés dans le mandat ou l'ordonnance, y rechercher l'enfant et l'en retirer.

**Appréhension de l'enfant sans mandat**

(7) Le préposé à la protection de l'enfance peut, sans mandat, amener un enfant dans un lieu sûr s'il croit, en se fondant sur des motifs raisonnables et probables :

- a) d'une part, que l'enfant a besoin de protection;
- b) d'autre part, que la santé ou la sécurité de l'enfant risquerait vraisemblablement d'être compromise pendant le laps de temps nécessaire à l'obtention d'une audience en vertu du paragraphe 87 (1) ou du mandat prévu au paragraphe (2).

**Enfant amené sans mandat dans un lieu sûr**

(7) Le préposé à la protection de l'enfance peut, sans mandat, amener un enfant dans un lieu sûr s'il croit, en se fondant sur des motifs raisonnables et probables, ce qui suit :

- a) l'enfant a besoin de protection;
- a.1) l'enfant a moins de 16 ans;
- b) la santé ou la sécurité de l'enfant risquerait vraisemblablement d'être compromise pendant le laps de temps nécessaire à l'obtention d'une audience en vertu du paragraphe 87 (1) ou du mandat prévu au paragraphe (2).

**Aide de la police**

(8) Le préposé à la protection de l'enfance qui agit dans le cadre du présent article peut demander l'aide d'un agent de la paix.

**Examen de l'enfant**

(9) Le préposé à la protection de l'enfance qui agit dans le cadre du paragraphe (7) ou en vertu d'un mandat décerné en vertu du paragraphe (2) ou d'une ordonnance rendue en vertu de l'alinéa (4) d) peut autoriser l'examen médical d'un enfant si le consentement d'un parent serait normalement exigé.

**Droit d'entrer**

(10) Le préposé à la protection de l'enfance qui croit, en se fondant sur des motifs raisonnables et probables, qu'un enfant visé au paragraphe (7) se trouve dans des locaux peut, sans mandat, y entrer, en employant la force si cela est nécessaire, y rechercher l'enfant et l'en retirer.

**Conformité aux règlements**

(11) Le préposé à la protection de l'enfance autorisé à entrer dans des locaux en vertu du paragraphe (6) ou (10) exerce ce pouvoir conformément aux règlements.

**Pouvoirs de l'agent de la paix**

(12) Les paragraphes (2), (6), (7), (10) et (11) s'appliquent à un agent de la paix comme s'il était un préposé à la protection de l'enfance.

**Immunité**

(13) Sont irrecevables les actions intentées contre un agent de la paix ou un préposé à la protection de l'enfance pour un acte accompli de bonne foi dans l'exercice effectif ou censé tel des fonctions que lui attribue le présent article ou pour une négligence ou un manquement qu'il aurait commis dans l'exercice de bonne foi de ces fonctions.

**Exception : enfants de 16 et 17 ans amenés dans un lieu sûr avec consentement**

80.1 (1) Un préposé à la protection de l'enfance peut amener dans un lieu sûr, avec son consentement, un enfant de 16 ou 17 ans qui fait l'objet d'une ordonnance de surveillance provisoire ou définitive.

**Ordonnance de surveillance provisoire ou définitive**

(2) La définition qui suit s'applique au présent article.

«ordonnance de surveillance provisoire ou définitive» Ordonnance rendue en vertu de l'alinéa 91 (2) b) ou c), de la disposition 1 ou 4 du paragraphe 98 (1), du paragraphe 110 (8) ou 112 (10) ou de l'alinéa 113 (1) a).

CAS PARTICULIERS D'APPREHENSION D'ENFANTS

## Soins conformes aux traditions

79 La société fait tous les efforts raisonnables pour mettre en oeuvre un plan de soins conformes aux traditions pour un enfant inuit, métis ou de Premières Nations si l'enfant réunit les conditions suivantes :

a) il a besoin de protection;

b) il ne peut rester ou être rendu aux soins et à la garde de la personne qui en était responsable immédiatement avant l'intervention prévue sous le régime de la présente partie;

b) il ne peut rester ou être rendu aux soins et à la garde de la personne qui en était responsable immédiatement avant l'intervention prévue sous le régime de la présente partie ou, si une ordonnance portant sur la garde de l'enfant est exécutoire en Ontario, de la personne à qui l'ordonnance reconnaît le droit d'avoir la garde de l'enfant;

c) il est membre d'une bande ou s'identifie avec une bande, ou il est membre d'une communauté inuite, métisse ou de Premières Nations ou s'identifie avec une telle communauté.

## INTRODUCTION D'UNE INSTANCE PORTANT SUR LA PROTECTION D'UN ENFANT

### Mandats, ordonnances, etc.

#### Requête

80 (1) Une société peut demander au tribunal, par voie de requête, d'établir si un enfant a besoin de protection.

#### Mandat d'amener un enfant

(2) Un juge de paix peut décerner un mandat autorisant un préposé à la protection de l'enfance à amener un enfant dans un lieu sûr s'il est convaincu, à la suite d'une dénonciation faite sous serment par un préposé à la protection, qu'il existe des motifs raisonnables et probables de croire :

a) d'une part, que l'enfant a besoin de protection;

b) d'autre part, qu'aucun autre plan d'action moins restrictif ou susceptible de protéger convenablement l'enfant n'est disponible.

#### Mandat d'amener un enfant dans un lieu sûr

(2) Un juge de paix peut décerner un mandat autorisant un préposé à la protection de l'enfance à amener un enfant dans un lieu sûr s'il est convaincu, à la suite d'une dénonciation faite sous serment par un préposé à la protection, qu'il existe des motifs raisonnables et probables de croire ce qui suit :

0.a) l'enfant a moins de 16 ans;

a) l'enfant a besoin de protection;

b) aucun autre plan d'action moins restrictif ou susceptible de protéger convenablement l'enfant n'est disponible.

#### Interdiction de refuser de décerner un mandat

(3) Le juge de paix ne doit pas refuser de décerner un mandat en vertu du paragraphe (2) pour le seul motif que le préposé à la protection de l'enfance peut amener l'enfant dans un lieu sûr en vertu du paragraphe (7).

#### Ordonnance d'amener un enfant dans un lieu sûr

(4) Si le tribunal est convaincu, à la suite d'une requête d'une personne et sur avis à la société, qu'il existe des motifs raisonnables et probables de croire :

a) d'une part, qu'un enfant a besoin de protection, que l'affaire a été portée à la connaissance de la société, que la société n'a pas présenté la requête visée au paragraphe (1) et qu'aucun préposé à la protection de l'enfance n'a demandé le mandat prévu au paragraphe (2), ni appréhendé l'enfant en vertu du paragraphe (7);

a) d'une part, qu'un enfant a besoin de protection, que l'affaire a été portée à la connaissance de la société, que la société n'a pas présenté la requête visée au paragraphe (1) et qu'aucun préposé à la protection de l'enfance n'a demandé le mandat prévu au paragraphe (2), ni amené l'enfant dans un lieu sûr en vertu du paragraphe (7);

b) d'autre part, que l'enfant ne peut être convenablement protégé que s'il est amené devant le tribunal,

le tribunal peut ordonner :

c) soit que la personne responsable de l'enfant amène l'enfant devant le tribunal à la date, à l'heure et au lieu indiqués dans l'ordonnance pour tenir l'audience prévue au paragraphe 87 (1) qui vise à établir si l'enfant a besoin de protection;

d) soit, si le tribunal est convaincu que l'ordonnance visée à l'alinéa c) ne protégerait pas convenablement l'enfant, que le préposé à la protection de l'enfance au service de la société amène l'enfant dans un lieu sûr.

il est souhaitable qu'un avocat représente l'enfant afin de sauvegarder ses intérêts, à moins que le tribunal ne soit convaincu, après avoir tenu compte de l'opinion et des désirs de l'enfant, qui doivent être dûment pris en considération eu égard à son âge et à son degré de maturité, que les intérêts de l'enfant sont convenablement protégés d'une autre manière.

#### Cas où le parent est mineur

(5) Sauf ordonnance contraire du tribunal, si, dans une instance introduite sous le régime de la présente partie, le parent de l'enfant a moins de 18 ans, l'avocat des enfants doit représenter le parent.

#### PARTIES ET AVIS

##### Parties

78 (1) Sont parties à l'instance introduite sous le régime de la présente partie :

1. Le requérant.

2. La société compétente en la matière.

3. Un parent de l'enfant.

4. Dans le cas d'un enfant inuit, métis ou de Premières Nations, les personnes visées aux dispositions 1, 2 et 3 et le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

##### Fonction du directeur

(2) À n'importe quelle étape de l'instance, le tribunal doit joindre le directeur comme partie à la suite d'une motion du directeur à cet effet.

##### Droit de participer

(3) La personne, y compris un parent de famille d'accueil, qui a pris soin de l'enfant de façon continue pendant les six mois qui ont précédé l'audience :

a) a droit au même avis d'instance qu'une partie;

b) peut assister à l'audience;

c) peut être représentée par un avocat;

d) peut présenter des observations au tribunal.

Toutefois, elle ne doit pas prendre part d'une autre manière à l'audience sans l'autorisation du tribunal.

##### Enfant de 12 ans ou plus

(4) L'enfant de 12 ans ou plus qui fait l'objet d'une instance introduite sous le régime de la présente partie a le droit de recevoir un avis d'instance et d'assister à l'audience, à moins que le tribunal ne soit convaincu que sa présence à l'audience lui causerait des maux affectifs. Dans ce cas, le tribunal ordonne que l'enfant ne reçoive pas un avis d'instance et qu'il ne puisse pas assister à l'audience.

##### Enfant de moins de 12 ans

(5) L'enfant de moins de 12 ans qui fait l'objet d'une instance introduite sous le régime de la présente partie n'a pas le droit de recevoir un avis d'instance, ni d'assister à l'audience, à moins que le tribunal ne soit convaincu :

a) d'une part, que l'enfant est en mesure de comprendre l'audience;

b) d'autre part, que la présence de l'enfant à l'audience ne lui causera pas de maux affectifs,

et qu'il n'ordonne que l'enfant reçoive un avis d'instance et puisse assister à l'audience.

##### Participation de l'enfant

(6) L'enfant qui est le requérant en vertu du paragraphe 110 (4) ou 112 (4) (révision du statut de l'enfant), qui reçoit l'avis d'instance prévu par la présente partie ou qui est représenté par un avocat a le droit de participer à l'instance et d'interjeter appel en vertu de l'article 118 comme s'il était une partie.

##### Permission de passer outre à l'envoi d'un avis

(7) S'il est convaincu que le délai exigé pour envoyer un avis à une personne risque de compromettre la santé ou la sécurité de l'enfant, le tribunal peut permettre de passer outre à l'envoi d'un avis à cette personne.

#### SOINS CONFORMES AUX TRADITIONS



- (c) la société est convaincue qu'aucun autre plan d'action moins perturbateur, comme la prestation de soins à l'enfant dans son propre foyer ou auprès d'un membre de sa parenté, d'un voisin ou d'un autre membre de sa communauté ou de sa famille élargie, ne peut convenablement protéger l'enfant;
- (d) l'enfant veut conclure l'entente.

#### **Durée de l'entente**

- (2) L'entente peut être conclue pour une période maximale de 12 mois. Elle peut toutefois être renouvelée si sa durée totale, avec les prorogations, ne dépasse pas 24 mois.

#### **Rapports antérieurs ou actuels avec une société**

- (3) Un enfant peut conclure une entente en vertu du présent article indépendamment de ses rapports antérieurs ou actuels avec une société et de la période pendant laquelle il a été confié aux soins d'une société conformément soit à une entente conclue en vertu du paragraphe 74 (1), soit à une ordonnance rendue en vertu de l'alinéa 91 (2) d) ou de la disposition 2 ou 3 du paragraphe 98 (1).

#### **Avis de résiliation de l'entente**

- (4) Une partie à une entente conclue en vertu du présent article peut la résilier à tout moment en donnant aux autres parties un avis écrit de son intention.

#### **Expiration de l'entente : 18 ans**

- (5) Aucune entente conclue en vertu du présent article ne demeure en vigueur après le 18<sup>e</sup> anniversaire de naissance de la personne qui en fait l'objet.

#### **Révocation préalable d'ententes et d'ordonnances en cours**

- (6) Malgré le paragraphe (3), aucune entente ne peut être conclue en vertu de l'article 74 ou qu'une ordonnance en matière de soins ou de surveillance d'un enfant visée à la présente partie n'est pas révoquée.

#### **Représentation par l'avocat des enfants**

- (7) L'avocat des enfants peut représenter l'enfant qui conclut une entente en vertu du présent article s'il est d'avis que cela est approprié.

#### **REPRÉSENTATION PAR UN AVOCAT**

#### **Représentation par un avocat**

- 77 (1) Un enfant peut être représenté par un avocat à n'importe quelle étape d'une instance introduite sous le régime de la présente partie.

#### **Décision du tribunal**

- (2) Si un enfant n'est pas représenté par un avocat dans une instance introduite sous le régime de la présente partie, le tribunal :

a) doit, aussitôt que la chose peut se faire après l'introduction de l'instance;

b) peut, à une étape ultérieure de l'instance,

établir s'il est souhaitable qu'un avocat représente l'enfant afin de sauvegarder ses intérêts.

#### **Directive du tribunal**

- (3) Si le tribunal décide qu'il est souhaitable qu'un avocat représente un enfant afin de sauvegarder ses intérêts, il ordonne cette mesure.

#### **Critères**

(4) Si, selon le cas :

- a) le tribunal est d'avis qu'il existe une divergence de vues entre un enfant et un parent ou une société et que la société propose soit de retirer à une personne le soin de l'enfant, soit de faire en sorte que l'enfant soit confié aux soins d'une société de façon provisoire ou prolongée en vertu de la disposition 2 ou 3 du paragraphe 98 (1);

b) l'enfant est confié aux soins de la société et :

(i) soit aucun parent ne comparait devant le tribunal,

(ii) soit il est allégué que l'enfant a besoin de protection au sens de l'alinéa 73 (2) a), c), f), g) ou j);

c) l'enfant n'a pas le droit d'assister à l'audience,

4. L'engagement par la personne visée au paragraphe (1) de garder le contact avec l'enfant et de participer aux soins qui lui sont fournis.

5. La désignation par la personne visée au paragraphe (1), s'il lui est impossible de garder le contact avec l'enfant et de participer aux soins qui lui sont fournis, d'une autre personne disposée à accepter cette responsabilité.

6. Le nom du particulier qui est la principale personne-ressource entre la société et la personne visée au paragraphe (1).

7. Toute autre disposition prescrite.

### Personne désignée par le comité consultatif

(11) Si la personne visée au paragraphe (1) ne prend pas l'engagement prévu à la disposition 4 du paragraphe (10) ou ne désigne pas une personne comme le prévoit la disposition 5 du paragraphe (10), un comité consultatif sur les placements en établissement qui est créé en vertu du paragraphe 62 (1) et qui est compétent peut, en consultation avec la société, nommer une personne appropriée disposée à garder le contact avec l'enfant et à participer aux soins qui lui sont fournis.

### Modification de l'entente

(12) Les parties à une entente relative à des soins temporaires peuvent la modifier à tout moment d'une manière conforme à la présente partie et aux règlements pris en vertu de celle-ci.

### Expiration de l'entente : 18 ans

(13) Aucune entente relative à des soins temporaires ne demeure en vigueur après le 18<sup>e</sup> anniversaire de naissance de la personne qui en fait l'objet.

### Avis de résiliation

75 (1) Une partie à une entente relative à des soins temporaires peut la résilier à tout moment en donnant aux autres parties un avis écrit de son intention.

### Entrée en vigueur de l'avis

(2) En cas de remise de l'avis visé au paragraphe (1), l'entente est résiliée à l'expiration d'un délai de cinq jours, ou du délai d'au plus 21 jours que l'entente précise, après la date à laquelle toutes les autres parties ont effectivement reçu l'avis.

### Réponse d'une société à un avis de résiliation

(3) La société qui remet ou reçoit, en vertu du paragraphe (1), un avis d'intention de résilier une entente relative à des soins temporaires doit, le plus tôt possible et, en tout état de cause, avant la résiliation de l'entente en vertu du paragraphe (2), prendre l'une ou l'autre des mesures suivantes :

a) faire en sorte que l'enfant soit rendu à la personne qui a conclu l'entente ou à la personne qui a obtenu une ordonnance de garde de l'enfant depuis la conclusion de l'entente;

b) si elle est d'avis que l'enfant aurait besoin de protection s'il était rendu à la personne visée à l'alinéa a), amener l'enfant devant le tribunal en vertu de la présente partie afin de faire établir si l'enfant aurait besoin de protection dans ce cas-;

c) si l'enfant a 16 ou 17 ans et que les conditions énoncées aux alinéas 76 (1) a), b), c) et d) sont réunies, conclure une entente écrite avec l'enfant en vertu du paragraphe 76 (1).

### Expiration de l'entente

(4) Si l'entente relative à des soins temporaires expire ou est sur le point d'expirer et n'est pas prorogée, la société doit, avant l'expiration de l'entente ou le plus tôt possible par la suite et, en tout état de cause, au cours des 21 jours qui suivent l'expiration de l'entente, prendre l'une ou l'autre des mesures suivantes :

a) faire en sorte que l'enfant soit rendu à la personne qui a conclu l'entente ou à la personne qui a obtenu une ordonnance de garde de l'enfant depuis la conclusion de l'entente;

b) si elle est d'avis que l'enfant aurait besoin de protection s'il était rendu à la personne visée à l'alinéa a), amener l'enfant devant le tribunal en vertu de la présente partie afin de faire établir si l'enfant aurait besoin de protection dans ce cas-;

c) si l'enfant a 16 ou 17 ans et que les conditions énoncées aux alinéas 76 (1) a), b), c) et d) sont réunies, conclure une entente écrite avec l'enfant en vertu du paragraphe 76 (1).

### Ententes avec des jeunes de 16 et 17 ans

76 (1) La société et l'enfant de 16 ou 17 ans peuvent conclure une entente écrite relativement à la prestation de services et de soutiens à l'enfant si les conditions suivantes sont réunies :

a) la société exerce sa compétence dans le territoire où l'enfant réside;

b) la société a établi que l'enfant a ou peut avoir besoin de protection;

## Entente relative à des soins temporaires

74 (1) La personne qui ne peut pas temporairement fournir des soins convenables à l'enfant confié à sa garde, d'une part, et la société dont le territoire de compétence englobe le lieu de résidence de cette personne, d'autre part, peuvent conclure une entente écrite en vue de confier l'enfant aux soins et à la garde de la société.

### Participation obligatoire de l'enfant plus âgé à l'entente

(2) Aucune entente relative à des soins temporaires ne doit être conclue à l'égard d'un enfant de 12 ans ou plus si l'enfant n'est pas partie à l'entente.

### Exception : déficience intellectuelle

(3) Le paragraphe (2) ne s'applique pas s'il a été établi, en fonction d'une évaluation effectuée dans l'année précédant la conclusion de l'entente, que l'enfant n'a pas la capacité juridique d'être partie à l'entente à cause d'une déficience intellectuelle.

### Obligation de la société

(4) La société ne doit conclure une entente relative à des soins temporaires que si les conditions suivantes sont réunies :

- elle a établi la disponibilité d'un placement en établissement qui est approprié et qui profitera vraisemblablement à l'enfant;
- elle est convaincue qu'aucun autre plan d'action moins perturbateur, comme la prestation de soins à l'enfant dans son propre foyer, ne peut convenablement protéger l'enfant.

### Durée de l'entente

(5) Aucune entente relative à des soins temporaires ne doit être conclue pour une période supérieure à six mois. Les parties à une entente de ce genre peuvent toutefois, avec l'approbation écrite du directeur, convenir de proroger l'entente une ou plusieurs fois si la durée totale de l'entente, avec ses prorogations, ne dépasse pas 12 mois.

### Délai

(6) Aucune entente relative à des soins temporaires ne doit être conclue ou prorogée si elle a pour résultat que l'enfant est confié aux soins et à la garde d'une société pendant une période supérieure à ce qui suit :

- 12 mois, si l'enfant a moins de 6 ans le jour où l'entente est conclue ou prorogée;
- 24 mois, si l'enfant a 6 ans ou plus le jour où l'entente est conclue ou prorogée.

### Calcul de la période de soins

(7) La période pendant laquelle l'enfant a été confié aux soins et à la garde d'une société conformément à l'une ou l'autre des ordonnances ou ententes suivantes entre dans le calcul de la période visée au paragraphe (6) :

- Une ordonnance rendue en vertu de la disposition 2 du paragraphe 98 (1) et ayant pour effet de confier un enfant aux soins d'une société de façon provisoire.
- Une entente relative à des soins temporaires conclue en vertu du paragraphe (1) du présent article.
- Une ordonnance provisoire rendue en vertu de l'alinéa 91 (2) d).

### Périodes antérieures prises en compte

(8) La période mentionnée au paragraphe (6) doit comprendre les périodes antérieures pendant lesquelles l'enfant était confié aux soins et à la garde d'une société par suite d'une ordonnance ou entente visée au paragraphe (7), à l'exclusion de toute période précédant une période continue d'au moins cinq ans pendant laquelle l'enfant n'était pas confié aux soins et à la garde d'une société.

### Consentement à un traitement médical

(9) L'entente relative à des soins temporaires peut prévoir que, si l'enfant est jugé incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, la société a le droit d'agir à la place d'un parent pour ce qui est de consentir au traitement au nom de l'enfant.

### Contenu de l'entente

(10) L'entente relative à des soins temporaires doit comprendre les éléments suivants :

- Une déclaration de toutes les parties à l'entente selon laquelle l'enfant est désormais confié aux soins et à la garde de la société.
- Une déclaration de toutes les parties à l'entente selon laquelle le placement de l'enfant est volontaire.
- Une déclaration de la personne visée au paragraphe (1) selon laquelle elle est temporairement incapable de fournir des soins convenables à l'enfant et qu'elle a discuté avec la société de solutions de rechange au placement de l'enfant en établissement.



**Intérêt véritable d'un enfant inuit, métis ou de Premières Nations**

(4) La personne tenue, en application de la présente partie, de rendre une ordonnance ou de prendre une décision dans l'intérêt véritable d'un enfant inuit, métis ou de Premières Nations doit également tenir compte de l'importance de préserver l'identité culturelle d'un enfant et ses liens avec la communauté en reconnaissance du caractère unique que revêtent la culture, le patrimoine et les traditions propres aux Premières Nations, aux Inuits et aux Métis.

**Intérêt véritable de l'enfant**

(3) La personne tenue, en application de la présente partie, de rendre une ordonnance ou de prendre une décision dans l'intérêt véritable d'un enfant étudie ce qui suit :

- a) l'opinion et les désirs de l'enfant, qui doivent être dûment pris en considération eu égard à son âge et à son degré de maturité, sauf s'ils ne peuvent être établis;
- b) dans le cas d'un enfant inuit, métis ou de Premières Nations, l'importance de préserver l'identité culturelle de l'enfant et les liens qui l'unissent à la communauté en reconnaissance du caractère unique que revêtent la culture, le patrimoine et les traditions propres aux Premières Nations, aux Inuits et aux Métis, et les éléments prévus aux alinéas a) et c);
- c) tout autre facteur que la personne juge pertinent, notamment :
  - (i) les besoins physiques, mentaux et affectifs de l'enfant, et les soins ou le traitement qui conviennent pour répondre à ces besoins;
  - (ii) le niveau de développement physique, mental et affectif de l'enfant;
  - (iii) la race de l'enfant, son ascendance, son lieu d'origine, sa couleur, son origine ethnique, sa citoyenneté, la diversité de sa famille, son handicap, sa croyance, son sexe, son orientation sexuelle, son identité sexuelle et l'expression de son identité sexuelle;
  - (iv) le patrimoine culturel et linguistique de l'enfant;
  - (v) l'importance, en ce qui concerne le développement de l'enfant, d'une relation positive avec un parent et d'une place sûre en tant que membre d'une famille;
  - (vi) les relations et les liens affectifs de l'enfant avec un parent, un frère ou une sœur, un membre de sa parenté, un membre de sa famille élargie ou un membre de sa communauté;
  - (vii) l'importance de la continuité en ce qui concerne les soins à fournir à l'enfant et les conséquences que peut avoir sur lui toute interruption de cette continuité;
  - (viii) les avantages du programme que propose la société concernant les soins à fournir à l'enfant, y compris la proposition que l'enfant soit placé en vue de son adoption ou adopté, comparativement à la solution qui consisterait à laisser ou à rendre l'enfant à un parent;
  - (ix) les conséquences sur l'enfant de tout retard relativement à la solution de son cas;
  - (x) le risque que l'enfant subisse un préjudice si on le retire à un parent, s'il est tenu éloigné de lui, s'il retourne vivre avec lui ou s'il continue de vivre avec lui;
  - (xi) le degré de risque, s'il en est, qui a justifié la conclusion selon laquelle l'enfant a besoin de protection.

**Lieu sûr**

(5) Pour l'application de la définition de «lieu sûr» au paragraphe (1), le foyer d'une personne est un lieu sûr pour un enfant si :

- a) d'une part, la personne est un membre de la parenté de l'enfant ou un membre de sa famille élargie ou de sa communauté;
- b) d'autre part, la société ou, dans le cas d'un enfant inuit, métis ou de Premières Nations, un fournisseur de services aux familles et aux enfants a effectué une évaluation de ce foyer conformément au protocole prescrit et est convaincu que la personne est disposée et apte à offrir un milieu de vie sûr à l'enfant;
- b) d'autre part, la société ou, dans le cas d'un enfant inuit, métis ou de Premières Nations, la société ou un fournisseur de services aux familles et aux enfants a effectué une évaluation de ce foyer conformément au protocole prescrit et est convaincu que la personne est disposée et apte à offrir un milieu de vie sûr à l'enfant.

**Définition : fournisseur de services aux familles et aux enfants**

(6) La définition qui suit s'applique au paragraphe (5).

«fournisseur de services aux familles et aux enfants» Fournisseur de services aux familles et aux enfants inuits, métis ou de Premières Nations désigné en vertu de l'article 69.

i) l'enfant qui risque vraisemblablement de subir le type de maux affectifs visés au sous-alinéa f) (i), (ii), (iii), (iv) ou (v), si son parent ou la personne qui en est responsable ne fournit pas des services ou un traitement afin de prévenir ces maux ou n'y donne pas accès ou, si l'enfant est incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, refuse ou n'est pas disponible pour le faire;

j) l'enfant dont l'état mental ou affectif ou le trouble de développement risque, s'il n'y est pas remédié, de porter gravement atteinte à son développement, si son parent ou la personne qui en est responsable ne fournit pas un traitement afin de remédier à cet état ou à ce trouble ou de le soulager ou n'y donne pas accès ou, si l'enfant est incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, refuse ou n'est pas en mesure de donner son consentement à ce traitement, ou n'est pas disponible pour le faire;

k) l'enfant dont le parent est décédé ou ne peut pas exercer ses droits de garde sur l'enfant et qui n'a pas pris de mesures suffisantes relativement à la garde de l'enfant et aux soins à lui fournir ou, si l'enfant est placé dans un établissement, l'enfant dont le parent refuse d'en assumer à nouveau la garde et de lui fournir des soins, n'est pas en mesure de le faire ou n'est pas disposé à le faire;

l) l'enfant de moins de 12 ans qui a tué ou gravement blessé une autre personne ou a causé des dommages importants aux biens d'une autre personne et qui doit subir un traitement ou recevoir des services afin d'empêcher la répétition de ces actes, si son parent ou la personne qui en est responsable ne fournit pas des services ou un traitement ou n'y donne pas accès ou, si l'enfant est incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, refuse ou n'est pas en mesure de donner son consentement à ce traitement, ou n'est pas disponible pour le faire;

m) l'enfant de moins de 12 ans qui a, à plusieurs reprises, blessé une autre personne ou causé une perte ou des dommages aux biens d'une autre personne, avec l'encouragement de la personne qui en est responsable ou en raison du défaut ou de l'incapacité de cette personne de le surveiller convenablement;

n) l'enfant dont le parent n'est pas en mesure de lui fournir des soins et qui est amené devant le tribunal avec le consentement du parent et, si l'enfant a 12 ans ou plus, avec son consentement, afin d'être traité comme le prévoit la présente partie afin que la question soit traitée comme le prévoit la présente partie;

o) l'enfant de 16 ou 17 ans dans les circonstances ou situations prescrites.

### Intérêt véritable de l'enfant

(3) La personne tenue, en application de la présente partie, de rendre une ordonnance ou de prendre une décision dans l'intérêt véritable d'un enfant étudie les facteurs suivants qu'elle juge pertinents :

1. L'opinion et les désirs de l'enfant, qui doivent être dûment pris en considération eu égard à son âge et à son degré de maturité;

2. Les besoins physiques, mentaux et affectifs de l'enfant, et les soins ou le traitement qui conviennent pour répondre à ces besoins;

3. Le niveau de développement physique, mental et affectif de l'enfant;

4. La race de l'enfant, son ascendance, son lieu d'origine, sa couleur, son origine ethnique, sa citoyenneté, la diversité de sa famille, son handicap, sa croyance, son sexe, son orientation sexuelle, son identité sexuelle et l'expression de son identité sexuelle;

5. Le patrimoine culturel et linguistique de l'enfant;

6. L'importance, en ce qui concerne le développement de l'enfant, d'une relation positive avec un parent et d'une place sûre en tant que membre d'une famille;

7. Les relations et les liens affectifs de l'enfant avec un parent, un frère ou une sœur, un membre de sa parenté, un membre de sa famille élargie ou un membre de sa communauté;

8. L'importance de la continuité en ce qui concerne les soins à fournir à l'enfant et les conséquences que peut avoir sur lui toute interruption de cette continuité;

9. Les avantages du programme que propose la société concernant les soins à fournir à l'enfant, y compris la proposition que l'enfant soit placé en vue de son adoption ou adopté, comparativement à la solution qui consisterait à laisser ou à rendre l'enfant à un parent;

10. Les conséquences sur l'enfant de tout retard relativement à la solution de son cas;

11. Le risque que l'enfant subisse un préjudice si on le retire à un parent, s'il est tenu éloigné de lui, s'il retourne vivre avec lui ou s'il continue de vivre avec lui;

12. Le degré de risque, s'il en est, qui a justifié la conclusion selon laquelle l'enfant a besoin de protection;

13. Tout autre facteur pertinent.



6. Le particulier qui, au cours des 12 mois qui ont précédé l'intervention prévue sous le régime de la présente partie, a manifesté l'intention bien arrêtée de traiter l'enfant comme s'il s'agissait d'un enfant de sa famille ou a reconnu le lien de filiation qui l'unit à l'enfant et a subvenu à ses besoins.

7. Le particulier qui, aux termes d'une entente écrite ou d'une ordonnance d'un tribunal, est tenu de subvenir aux besoins de l'enfant, s'est vu accorder la garde de l'enfant ou possède un droit de visite.

8. Le particulier qui a reconnu le lien de filiation qui l'unit à l'enfant en déposant une déclaration solennelle en vertu de l'article 12 de la Loi portant réforme du droit de l'enfance, dans sa version antérieure au jour de l'entrée en vigueur du paragraphe 1 (1) de la Loi de 2016 sur l'égalité de toutes les familles (modifiant des lois en ce qui concerne la filiation et les enregistrements connexes). («parent»)

«présosé à la protection de l'enfance» Le directeur, le directeur local ou une personne qui satisfait aux exigences prescrites et qui est agréée par le directeur ou le directeur local pour l'application de l'article 80 (introduction d'une instance portant sur la protection de l'enfant) et pour d'autres fins prescrites. («child protection worker»)

### Enfant ayant besoin de protection

(2) Est un enfant ayant besoin de protection :

a) l'enfant qui a subi des maux physiques infligés par la personne qui en est responsable ou, selon le cas :

(i) causés par le défaut de cette personne de lui fournir des soins, de subvenir à ses besoins, de le surveiller ou de le protéger convenablement, ou résultant de ce défaut,

(ii) causés par la négligence habituelle de cette personne pour ce qui est de lui fournir des soins, de subvenir à ses besoins, de le surveiller ou de le protéger, ou résultant de cette négligence;

b) l'enfant qui risque vraisemblablement de subir des maux physiques infligés par la personne qui en est responsable ou, selon le cas :

(i) causés par le défaut de cette personne de lui fournir des soins, de subvenir à ses besoins, de le surveiller ou de le protéger convenablement, ou résultant de ce défaut,

(ii) causés par la négligence habituelle de cette personne pour ce qui est de lui fournir des soins, de subvenir à ses besoins, de le surveiller ou de le protéger, ou résultant de cette négligence;

c) l'enfant qui a subi des maux physiques infligés par la personne qui en est responsable ou par une autre personne si la personne responsable de l'enfant sait ou devrait savoir qu'il existe un risque de mauvais traitements d'ordre sexuel ou d'exploitation sexuelle et qu'elle ne protège pas l'enfant;

d) l'enfant qui risque vraisemblablement de subir des mauvais traitements d'ordre sexuel ou d'être exploité sexuellement dans les circonstances mentionnées à l'alinéa c);

e) l'enfant qui a besoin d'un traitement en vue de guérir, de prévenir ou de soulager des maux physiques ou sa douleur, si son parent ou la personne qui en est responsable ne fournit pas le traitement ou n'y donne pas accès, ou, si l'enfant est incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, et que le parent est un mandataire spécial pour l'enfant, le parent refuse ou n'est pas en mesure de donner son consentement à ce traitement au nom de l'enfant, ou n'est pas disponible pour le faire;

f) l'enfant qui a subi des maux affectifs qui se traduisent, selon le cas, par :

(i) un grave sentiment d'angoisse,

(ii) un état dépressif grave,

(iii) un fort repliement sur soi,

(iv) un comportement autodestructeur ou agressif marqué,

(v) un important retard dans son développement,

si il existe des motifs raisonnables de croire que les maux affectifs que l'enfant a subis résultent des actes, du défaut d'agir ou de la négligence habituelle de son parent ou de la personne qui en est responsable;

g) l'enfant qui a subi le type de maux affectifs visés au sous-alinéa f) (i), (ii), (iii), (iv) ou (v), si son parent ou la personne qui en est responsable ne fournit pas des services ou un traitement afin de remédier à ces maux ou de les soulager ou n'y donne pas accès ou, si l'enfant est incapable de consentir à un traitement, au sens de la Loi de 1996 sur le consentement aux soins de santé, refuse ou n'est pas en mesure de donner son consentement à ce traitement, ou n'est pas disponible pour le faire;

h) l'enfant qui risque vraisemblablement de subir le type de maux affectifs visés au sous-alinéa f) (i), (ii), (iii), (iv) ou (v) résultant des actes, du défaut d'agir ou de la négligence habituelle de son parent ou de la personne qui en est responsable;



## Consultations avec les bandes et les communautés

71 La société, la personne ou l'entité qui fournit des services ou exerce des pouvoirs sous le régime de la présente loi relativement à des enfants ou à des adolescents inuits, métis ou de Premières Nations consulte régulièrement les bandes et les communautés inuites, métisses ou de Premières Nations au sujet, d'une part, de la prestation de ces services ou de l'exercice de ces pouvoirs et, d'autre part, des questions qui touchent les enfants ou les adolescents, notamment :

a) l'appréhension d'enfants et le placement d'enfants en établissement;

a) le fait d'amener des enfants dans un lieu sûr et le placement d'enfants en établissement;

b) la prestation de services de soutien aux familles;

c) l'élaboration de programmes relativement aux soins à fournir aux enfants;

d) la révision du statut d'un enfant en vertu de la partie V (Protection de l'enfance);

e) les ententes relatives à des soins temporaires conclues en vertu de la partie V (Protection de l'enfance);

f) les ententes conclues entre une société et des jeunes de 16 et 17 ans en vertu de la partie V (Protection de l'enfance);

g) les placements en vue d'une adoption;

h) la création de foyers d'urgence;

i) toute autre question prescrite;

## Consultations dans des cas précis

72 La société ou l'agence qui a l'intention, sous le régime de la présente loi, soit de fournir un service prescrit à un enfant inuit, métis ou de Premières Nations, soit d'exercer un pouvoir prescrit relativement à un tel enfant, consulte un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient, conformément aux règlements;

## Consultations dans des cas précis

72 La société, la personne ou l'entité qui a l'intention, sous le régime de la présente loi, soit de fournir un service prescrit à un enfant ou à un adolescent inuit, métis ou de Premières Nations, soit d'exercer un pouvoir prescrit relativement à un tel enfant ou adolescent, consulte un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant ou l'adolescent appartient, conformément aux règlements.

## PARTIE V

## PROTECTION DE L'ENFANCE

## INTERPRÉTATION

## Interprétation Définitions

73 (1) Les définitions qui suivent s'appliquent à la présente partie.

«lieu sûr» Famille d'accueil, hôpital, foyer d'une personne qui satisfait aux exigences du paragraphe (5) ou lieu ou catégorie de lieux désignés comme lieux sûrs par le directeur ou le directeur local en vertu de l'article 38, à l'exclusion d'un lieu de détention provisoire ou d'un lieu de garde en milieu ouvert ou en milieu fermé. («place of safety»)

«ordonnance extraprovinciale de protection d'un enfant» Ordonnance provisoire ou définitive rendue par un tribunal d'une autre province ou d'un territoire du Canada, ou d'une autorité législative étrangère prescrite si elle satisfait aux conditions prescrites, conformément à la législation sur le bien-être des enfants de cette province, de ce territoire ou de cette autre autorité législative et confiant un enfant aux soins et à la garde soit d'un organisme chargé du bien-être des enfants, soit de toute autre personne nommée dans l'ordonnance. («extra-provincial child protection order»)

«parent» En ce qui concerne un enfant, s'entend de chacune des personnes suivantes, à l'exclusion toutefois d'un parent de famille d'accueil :

1. Un parent de l'enfant aux termes de l'article 6, 8, 9, 10, 11 ou 13 de la Loi portant réforme du droit de l'enfance.

2. Dans le cas d'un enfant conçu par relation sexuelle, tout particulier visé à l'une des dispositions 1 à 5 du paragraphe 7 (2) de la Loi portant réforme du droit de l'enfance, à moins qu'il ne soit prouvé par la prépondérance des probabilités que le sperme utilisé pour concevoir l'enfant ne provenait pas du particulier.

3. Le particulier dont le statut en tant que parent de l'enfant a été établi ou reconnu par un tribunal compétent hors de l'Ontario.

4. Dans le cas d'un enfant adopté, un parent de l'enfant comme le prévoit l'article 214 ou 215.

5. Le particulier qui a la garde légitime de l'enfant.

#### **Infraction : entrave au travail d'un superviseur de programme**

(3) Est coupable d'une infraction la personne qui gêne ou entrave le travail du superviseur de programme qui effectue une inspection en vertu de la présente partie ou qui l'empêche de quelque autre façon d'exercer les pouvoirs ou fonctions que lui attribue la présente partie.

#### **Peine**

(4) La personne qui est déclarée coupable de l'infraction prévue au paragraphe (3) est passible d'une amende d'au plus 5 000 \$.

#### **Prescription**

(5) Aucune instance relative à une infraction ne peut être introduite en vertu du paragraphe (1) ou (3) plus de deux ans après le jour où les éléments de preuve de l'infraction ont été portés pour la première fois à la connaissance du directeur ou du superviseur de programme.

#### **Administrateurs, dirigeants et employés**

(6) Si une personne morale commet une infraction prévue au présent article, l'administrateur, le dirigeant ou l'employé de la personne morale qui a autorisé la commission de l'infraction ou y a participé en est également coupable.

### **PARTIE IV SERVICES À L'ENFANCE ET À LA FAMILLE — PREMIÈRES NATIONS, INUITS ET MÉTIS**

#### **Règlement : communautés inuites, métisses et de Premières Nations**

67 (1) Le ministre peut, par règlement, dresser des listes de communautés inuites, métisses et de Premières Nations pour l'application de la présente loi.

#### **Plus d'une communauté**

(2) Le règlement pris en vertu du paragraphe (1) peut énumérer une ou plusieurs communautés comme communautés inuites, métisses ou de Premières Nations.

#### **Consentement des représentants**

(3) Avant de prendre un règlement en vertu du paragraphe (1), le ministre doit obtenir le consentement des représentants de la communauté.

#### **Ententes**

68 Pour les besoins de la prestation de services, le ministre peut :

a) conclure des ententes avec des bandes et des communautés inuites, métisses ou de Premières Nations et toute autre partie que les bandes ou les communautés choisissent d'associer à ces ententes;

b) verser des fonds ~~aux ententes~~ aux personnes ou entités mentionnées à l'alinéa a) aux termes de ces ententes.

#### **Désignation d'un fournisseur de services aux familles et aux enfants inuits, métis ou de Premières Nations**

69 (1) Une bande ou une communauté inuite, métisse ou de Premières Nations peut désigner un organisme comme fournisseur de services aux familles et aux enfants inuits, métis ou de Premières Nations.

#### **Ententes**

(2) Si la bande ou la communauté inuite, métisse ou de Premières Nations a désigné un organisme comme fournisseur de services aux familles et aux enfants inuits, métis ou de Premières Nations, le ministre :

a) doit entamer des négociations, à la demande de la bande ou de la communauté, relativement à la prestation de services par le fournisseur concerné;

b) peut conclure des ententes avec le fournisseur concerné et, si la bande ou la communauté accepte, avec une autre personne relativement à la prestation de services;

c) peut désigner le fournisseur concerné, avec son consentement, comme société pour l'application du paragraphe 33 (1).

#### **Subvention : soins conformes aux traditions**

70 Si la bande ou la communauté inuite, métisse ou de Premières Nations déclare qu'un enfant inuit, métis ou de Premières Nations reçoit des soins conformes aux traditions, une société ou une entité peut accorder une subvention à la personne qui prend soin de l'enfant.

#### **Consultations**

71 La société ou l'agence qui fournit des services ou exerce des pouvoirs sous le régime de la présente loi relativement à des enfants inuits, métis ou de Premières Nations consulte régulièrement les bandes et les communautés inuites, métisses ou de Premières Nations au sujet, d'une part, de la prestation de ces services ou de l'exercice de ces pouvoirs et, d'autre part, des questions qui touchent les enfants, notamment :

**Recommandation : service moins restrictif**

(4) Si le comité consultatif est d'avis que la prestation d'un service moins restrictif qu'un placement en établissement conviendrait mieux à l'enfant, il recommande la prestation d'un tel service dans le rapport visé au paragraphe (3).

**Révision par la Commission****Demande de révision présentée à la Commission**

65 (1) L'enfant de 12 ans ou plus qui fait actuellement l'objet d'un placement en établissement auquel il s'oppose peut demander à la Commission de décider s'il doit rester à l'établissement où il se trouve ou être placé ailleurs, si le placement a fait l'objet d'un examen par le comité consultatif en application de l'article 63 et que, selon le cas :

- a) l'enfant n'est pas satisfait des recommandations du comité consultatif;
- b) les recommandations du comité consultatif n'ont pas été suivies.

**Révision par la Commission**

(2) La Commission révisé la demande présentée en vertu du paragraphe (1). Elle peut tenir une audience à cet effet.

**Avis d'audience**

(3) Dans les 10 jours suivant la réception de la demande de l'enfant, la Commission informe l'enfant de sa décision de tenir une audience ou non.

**Parties**

(4) Sont parties à l'audience :

- a) l'enfant;
- b) un parent de l'enfant ou, si l'enfant est confié à la garde légitime d'une société, la société;
- c) dans le cas d'un enfant inuit, métis ou de Premières Nations, les personnes visées aux alinéas a) et b) et un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient;
- d) les personnes que la Commission précise.

**Délai**

(5) La Commission termine sa révision et prend une décision dans les 30 jours suivant la réception de la demande de l'enfant, sauf si :

- a) elle tient une audience relativement à la demande;
- b) les parties acceptent que la Commission rende sa décision dans un délai plus long.

**Décision de la Commission**

(6) Après avoir effectué la révision prévue au paragraphe (2), la Commission peut, selon le cas :

- a) ordonner que l'enfant soit transféré dans un autre établissement, si elle est convaincue que cet autre placement est possible;
- b) ordonner que l'enfant obtienne son congé;
- c) confirmer le placement en cours.

**INFRACTIONS****Infractions**

66 (1) Est coupable d'une infraction la personne ou l'entité qui :

- a) contrevient à l'article 55 (rapports et renseignements);
- a.1) contrevient à l'article 56 (rapports et renseignements fournis aux entités prescrites);
- b) contrevient à l'article 57 (renseignements mis à la disposition du public);
- c) donne sciemment de faux renseignements dans une déclaration, un rapport ou un état exigés par la présente partie ou les règlements.

**Peine**

(2) La personne ou l'entité qui est déclarée coupable de l'infraction prévue au paragraphe (1) est passible d'une amende d'au plus 5 000 \$.



## Examen facultatif

(2) À la demande d'une personne ou de sa propre initiative, le comité consultatif peut, à tout moment, examiner ou réexaminer le placement en établissement, qui existe déjà ou qui est projeté, d'un enfant qui réside dans son territoire de compétence.

## Examen informel

(3) Le comité consultatif effectue son examen de manière informelle et à huis clos. Il peut notamment :

- a) rencontrer l'enfant, les membres de sa famille et leurs représentants, et leur poser des questions;
- b) rencontrer des personnes intervenant dans la prestation de services ainsi que d'autres personnes s'intéressant à cette question ou susceptibles de posséder des renseignements qui l'aideraient et leur poser des questions;
- c) examiner les documents et les rapports qui lui sont présentés;
- d) examiner les dossiers relatifs à l'enfant et aux membres de sa famille qui lui sont divulgués.

## Collaboration du fournisseur de services

(4) Le fournisseur de services aide le comité consultatif, à sa demande, à effectuer son examen et lui apporte sa collaboration à cette fin.

## Éléments à examiner

(5) Lorsqu'il effectue son examen, le comité consultatif :

- a) établit si l'enfant a un besoin particulier;
- a.1) tient compte de l'opinion et des désirs de l'enfant, qui doivent être dûment pris en considération eu égard à son âge et à son degré de maturité;

- b) étudie les programmes disponibles dans l'établissement où l'enfant est placé, ou dans celui où il est proposé qu'il soit placé, et établit si un de ces programmes est susceptible d'être bénéfique pour l'enfant;
- c) étudie si le placement en établissement, ou celui qui est proposé, convient à l'enfant dans les circonstances;
- d) précise une solution de rechange, s'il estime qu'une solution de rechange moins restrictive que le placement en établissement conviendrait mieux à l'enfant dans les circonstances;
- e) étudie l'importance de la continuité en ce qui concerne les soins à fournir à l'enfant et les conséquences que peut avoir sur lui toute interruption de cette continuité;
- f) dans le cas d'un enfant inuit, métis ou de Premières Nations, tient également compte de l'importance de préserver l'identité culturelle de l'enfant et ses liens avec la communauté en reconnaissance du caractère unique que revêtent la culture, le patrimoine et les traditions propres aux Premières Nations, aux Inuits et aux Métis.

## Recommandations du comité consultatif

### Personnes à informer

64 (1) Dès qu'il a terminé son examen, le comité consultatif communique ses recommandations aux personnes suivantes :

1. Le fournisseur de services.
2. Le représentant de l'enfant, le cas échéant.
3. Un parent de l'enfant ou, si l'enfant est confié à la garde légitime d'une société, la société.

~~4. L'enfant, s'il est raisonnable de s'attendre à ce qu'il comprenne;~~

~~4. L'enfant, dans un langage qu'il peut comprendre;~~

5. Dans le cas d'un enfant inuit, métis ou de Premières Nations, les personnes visées aux dispositions 1, 2, 3 et 4 et un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

## Enfant informé de son droit à demander la révision du placement en établissement

(2) Le comité consultatif qui effectue un examen informe l'enfant du droit que lui accorde l'article 65 de demander la révision de son placement s'il a 12 ans ou plus.

## Rapport présenté au ministre

(3) Dans les 30 jours suivant la fin de son examen, le comité consultatif présente un rapport sur ses conclusions et recommandations au ministre.

- a) le placement effectué sous le régime de la Loi sur le système de justice pénale pour les adolescents (Canada) ou de la partie VI (Justice pour les adolescents);
- b) le placement dans un programme de traitement en milieu fermé sous le régime de la partie VII (Mesures extraordinaires);
- c) le placement auprès d'une personne qui n'est ni un fournisseur de services ni un parent de famille d'accueil. («résidentiel placement»)

#### Comités consultatifs sur les placements en établissement

62 (1) Le ministre peut constituer des comités consultatifs sur les placements en établissement comprenant chacun une ou plusieurs personnes qu'il estime appropriées. Y compris, si le ministre le désire, un représentant d'une bande ou d'une communauté inuite, métisse ou de Premières Nations. Il établit le territoire de compétence de chaque comité consultatif.

#### Comités consultatifs sur les placements en établissement

62 (1) Le ministre peut constituer des comités consultatifs sur les placements en établissement et il doit établir le territoire de compétence de chaque comité consultatif.

#### Composition

(1.1) Chaque comité consultatif sur les placements en établissement comprend les personnes que le ministre estime appropriées, qui peuvent comprendre :

a) des personnes intervenant dans la prestation de services;

b) des personnes bien renseignées et qui ont manifesté un intérêt pour le bien-être des enfants;

c) un représentant du ministre;

d) si le ministre le désire, un représentant d'une bande ou d'une communauté inuite, métisse ou de Premières Nations.

#### Indemnités versées aux membres, embauche de personnel

(2) Le ministre peut verser des indemnités aux membres d'un comité consultatif et les rembourser de leurs frais de déplacement raisonnables. Il peut autoriser un comité consultatif à engager du personnel de soutien.

#### Fonctions du comité consultatif

(3) Il incombe au comité consultatif de conseiller, d'informer et d'aider les parents, les enfants et les fournisseurs de services en ce qui concerne les soins en établissement qui sont disponibles et appropriés, et les solutions de rechange qui existent. Il doit également effectuer les examens prévus à l'article 63, désigner des personnes pour l'application du paragraphe 74 (11) (contact avec un enfant dans le cadre d'une entente relative à des soins temporaires) et exercer les autres fonctions prescrites.

#### Rapports au ministre

(4) Le comité consultatif présente un rapport de ses activités au ministre lorsque celui-ci le lui demande chaque année et sur demande du ministre.

#### Examen par le comité consultatif

#### Examen obligatoire

63 (1) Le comité consultatif examine :

a) chaque placement en établissement, dans un foyer, d'un enfant qui réside dans son territoire de compétence, si le placement doit durer ou dure effectivement 90 jours ou plus ;

(i) le plus tôt possible, mais au plus tard dans les 45 jours du jour du placement de l'enfant dans le foyer,

(ii) à moins que le placement ne fasse l'objet d'un examen en vertu du sous-alinéa (i), dans les 12 mois de sa constitution ou au cours du délai plus long que le ministre autorise,

(iii) pendant la durée du placement, au moins une fois pendant chaque période de neuf mois qui fait suite à l'examen prévu au sous-alinéa (i) ou (ii);

b) chaque placement en établissement d'un enfant de 12 ans ou plus qui s'oppose au placement et qui réside dans son territoire de compétence :

(i) au cours de la semaine qui suit le 14<sup>e</sup> jour du placement de l'enfant,

(ii) pendant la durée du placement, au moins une fois pendant chaque période de neuf mois qui fait suite à l'examen prévu au sous-alinéa (i);

c) un placement en établissement qui existe déjà ou qui est projeté et que le ministre lui renvoie, dans les 30 jours suivant le renvoi.

(B) le superviseur de programme a besoin d'exercer les pouvoirs mentionnés au paragraphe 273 (1) pour pouvoir inspecter le service fourni ou la manière dont il est fourni,

(ii) qu'il existe un motif prescrit pour l'application du présent sous-alinéa.

#### Aide d'experts

(3) Le mandat peut autoriser des personnes qui possèdent des connaissances particulières, spécialisées ou professionnelles à accompagner le superviseur de programme et à l'aider à exécuter le mandat.

#### Expiration du mandat

(4) Le mandat décerné en vertu du présent article comporte une date d'expiration, qui ne doit pas tomber plus de 30 jours après le jour où le mandat a été décerné.

#### Prorogation du délai

(5) Un juge peut reporter la date d'expiration d'un mandat décerné en vertu du présent article d'au plus 30 jours, sur demande sans préavis du superviseur de programme nommé dans le mandat.

#### Recours à la force

(6) Le superviseur de programme nommé dans le mandat décerné en vertu du présent article peut recourir à toute la force nécessaire pour exécuter le mandat et peut se faire aider d'agents de la paix.

#### Heures d'exécution

(7) Sauf indication contraire, le mandat décerné en vertu du présent article ne peut être exécuté qu'entre 8 et 20 heures.

#### Autres questions

(8) Les paragraphes 273 (2) à (6) et l'article 276 s'appliquent, avec les adaptations nécessaires, à l'égard de l'exercice des pouvoirs mentionnés au paragraphe (2) sous l'autorité d'un mandat décerné en vertu du présent article.

#### Définition

(9) La définition qui suit s'applique au présent article.

«juge» Juge provincial ou juge de paix.

#### Rapport d'inspection

60 (1) À l'issue de l'inspection, le superviseur de programme rédige un rapport d'inspection et en remet une copie aux personnes suivantes :

a) le directeur;

b) le fournisseur de services ou l'organisme responsable;

c) toute autre personne prescrite.

#### Documentation : non-conformité

(2) S'il conclut que le fournisseur de services ou l'organisme responsable ne s'est pas conformé à une exigence de la présente loi, aux règlements ou à une directive donnée en vertu de la présente loi, le superviseur de programme documente la non-conformité dans son rapport d'inspection.

#### EXAMEN PAR LE COMITÉ CONSULTATIF SUR LES PLACEMENTS EN ÉTABLISSEMENT

#### Définitions

61 Les définitions qui suivent s'appliquent aux articles 62 à 65.

«besoin particulier» Besoin qui est soit lié à une déficience intellectuelle, à une déficience du comportement ou à une autre déficience, notamment affective, physique ou mentale, soit causé par une telle déficience. («special need»)

«comité consultatif» Comité consultatif sur les placements en établissement constitué en vertu du paragraphe 62 (1). («advisory committee»)

«foyer» S'entend :

a) soit d'un foyer pour enfants, à l'exclusion d'une maternité, que fait fonctionner le ministre ou qui fonctionne en vertu d'un permis délivré à cet effet sous le régime de la partie IX (Permis d'établissement) et qui est en mesure de fournir des soins en établissement où des soins en établissement peuvent être fournis à 10 enfants ou plus à la fois;

b) soit d'un bâtiment, d'un ensemble de bâtiments ou d'une partie d'un bâtiment que désigne le directeur et où des soins en établissement peuvent être fournis à 10 enfants ou plus à la fois. («institution»)

«placement en établissement» Sont exclus :



## Rapports et renseignements fournis au ministre

55 Chaque fournisseur de services et chaque organisme responsable :

- présente au ministre les rapports prescrits et lui fournit les renseignements prescrits, y compris des renseignements personnels, sous la forme et aux intervalles prescrits;
- présente un rapport au ministre et lui fournit des renseignements, y compris des renseignements personnels, lorsque le ministre le demande.

## Rapports et renseignements fournis aux entités prescrites

56 Chaque fournisseur de services et chaque organisme responsable fournit aux entités prescrites, de la manière prescrite, les rapports prescrits et les renseignements prescrits.

## Renseignements mis à la disposition du public

57 Chaque fournisseur de services et chaque organisme responsable met à la disposition du public, de la manière prescrite, les renseignements prescrits.

## INSPECTIONS PAR LE SUPERVISEUR DE PROGRAMME

### Inspection par le superviseur de programme sans mandat

58 (1) Afin de s'assurer de la conformité à la présente loi, aux règlements et aux directives données en vertu de la présente loi, le superviseur de programme peut, sans mandat ni préavis, entrer à toute heure raisonnable dans les locaux suivants pour y effectuer une inspection :

- Les locaux où un service est fourni sous le régime de la présente loi.
- Les locaux où un organisme responsable exerce une fonction visée au paragraphe 29 (5).
- Les locaux commerciaux d'un fournisseur de services.
- Les locaux commerciaux d'un organisme responsable.

### Restriction : logement

(2) Le pouvoir d'entrer dans un local visé au paragraphe (1) et de l'inspecter ne doit pas être exercé dans une pièce ou un endroit qui sert effectivement de logement, sauf si l'occupant y consent.

### Pièces d'identité

(3) Le superviseur de programme qui effectue une inspection présente, sur demande, les pièces d'identité suffisantes.

### Application d'autres dispositions

(4) Les articles 273 (pouvoirs de l'inspecteur) et 276 (admissibilité de certains documents) s'appliquent, avec les adaptations nécessaires, à l'égard d'une inspection effectuée en vertu du présent article.

### Inspection par le superviseur de programme avec mandat

59 (1) Le superviseur de programme peut, sans préavis, demander à un juge de lui décerner un mandat en vertu du présent article.

### Délivrance du mandat

(2) Un juge peut décerner un mandat autorisant le superviseur de programme qui y est nommé à entrer dans le local qui y est précisé et à exercer l'un ou l'autre des pouvoirs mentionnés au paragraphe 273 (1) s'il est convaincu, sur la foi d'une dénonciation faite sous serment ou d'une affirmation solennelle :

- que le local est visé au paragraphe 58 (1);
- que dans le cas d'un local ne servant pas de logement :
  - soit le superviseur de programme s'est vu empêché d'exercer le droit d'entrée prévu à l'article 58 ou un pouvoir prévu au paragraphe 273 (1),
  - soit il existe des motifs raisonnables de croire que le superviseur de programme se verra empêché d'exercer le droit d'entrée prévu à l'article 58 ou un pouvoir prévu au paragraphe 273 (1);
- dans le cas d'un local qui sert de logement, selon le cas :
  - que, à la fois :

(A) le superviseur de programme a des motifs raisonnables de croire qu'un service fourni, ou la manière dont il est fourni, cause ou causera vraisemblablement un préjudice en ce qui concerne la santé, la sécurité ou le bien-être d'une personne en raison de la non-conformité à la présente loi, aux règlements ou aux directives données en vertu de la présente loi,

**Fin déterminée**

(2) Si un testament, un acte ou un autre document par lequel un don, une fiducie, un legs ou une cession mentionnés au paragraphe (1) est fait ou donné indique que les biens visés par le transfert doivent être utilisés à une fin déterminée, le destinataire du transfert les utilise à cette fin.

#### **Champ d'application**

(3) Les paragraphes (1) et (2) s'appliquent, que le testament, l'acte ou le document par lequel est fait ou donné le don, la fiducie, le legs ou la cession soit passé avant ou après le jour de l'entrée en vigueur du présent article.

#### **Aucune indemnité**

**51 (1)** Malgré toute autre loi, aucune personne ou entité, y compris une société, n'a le droit d'être indemnisée pour une perte ou des dommages résultant d'une mesure directe ou indirecte que prend, en application de la présente loi, le ministre ou un superviseur nommé en vertu de l'article 43 ou 48, notamment la prise d'un arrêté en vertu de l'article 47.

#### **Idem, transfert de biens**

(2) Malgré toute autre loi, aucune personne ou entité, notamment une société, n'a le droit d'être indemnisée pour une perte ou des dommages, notamment une perte de jouissance, une perte de recettes et une perte de profits, résultant du transfert de biens en application d'un arrêté pris en vertu de l'article 47.

#### **Aucune expropriation**

(3) Aucune disposition de la présente mesure prise ou non prise conformément à la présente partie ne constitue une expropriation ou un effet préjudiciable pour l'application de la *Loi sur l'expropriation* ou par ailleurs en droit.

### **NOMINATIONS ET DÉLÉGATIONS DE POUVOIRS**

#### **Directeurs et superviseurs de programme**

##### **Nomination d'un directeur**

**52 (1)** Le ministre peut nommer un directeur qui est chargé d'exercer tout ou partie des pouvoirs et fonctions que lui attribuent la présente loi et les règlements.

##### **Nomination d'un superviseur de programme**

(2) Le ministre peut nommer un superviseur de programme pour exercer tout ou partie des pouvoirs et fonctions que lui attribuent la présente loi et les règlements.

#### **Conditions précisées**

(3) Le ministre peut préciser dans l'acte de nomination établi en vertu du présent article les conditions ou restrictions applicables.

#### **Rémunération et indemnités**

(4) Le ministre fixe la rémunération et les indemnités de la personne nommée en vertu du présent article qui n'est pas un fonctionnaire employé en application de la partie III de la *Loi de 2006 sur la fonction publique de l'Ontario*. Ces sommes sont prélevées sur les crédits affectés à cette fin par la Législature.

#### **Fonctions du directeur**

**53 (1)** Le directeur exerce les pouvoirs et fonctions d'une société dans les régions qui ne comptent pas de société.

#### **Pouvoirs du directeur local**

(2) Lorsqu'il exerce les pouvoirs et fonctions d'une société en application du paragraphe (1), le directeur possède tous les pouvoirs d'un directeur local.

#### **Délégation par le ministre**

**54 (1)** Le ministre peut déléguer à toute personne ou catégorie de personnes les pouvoirs ou fonctions que la présente loi lui attribue ou qu'elle attribue à un directeur, à un superviseur de programme ou à un employé au ministère.

#### **Conditions et autres**

(2) La délégation doit être faite par écrit et être assortie des restrictions, conditions et exigences énoncées dans l'acte de délégation.

#### **Actes scellés et contrats**

(3) L'article 6 de la *Loi sur le Conseil exécutif* ne s'applique pas à un acte scellé ou à un contrat passé en application d'une délégation faite en vertu du présent article.

## Obligation de la société

(7) La société qui reçoit un arrêté en application du paragraphe (6) :

- a) d'une part, donne avis de l'arrêté aux employés concernés, à leurs agents négociateurs et aux autres personnes ou entités dont les contrats sont touchés par l'arrêté;
- b) d'autre part, met des copies de l'arrêté à la disposition du public.

## Modifications supplémentaires

(8) Le ministre peut, à tout moment, révoquer ou modifier un arrêté pris en vertu du présent article, y compris les directives qu'il comprend, auquel cas les paragraphes (3) à (7) s'appliquent avec les adaptations nécessaires.

## Caractère contraignant de l'arrêté

(9) La société qui fait l'objet d'un arrêté pris en vertu du présent article doit s'y conformer.

## Pouvoirs nécessaires

(10) La société qui fait l'objet d'un arrêté pris en vertu du présent article est réputée avoir les pouvoirs nécessaires pour se conformer à l'arrêté malgré ce qui suit :

1. Toute loi ou tout règlement.

2. Tout autre acte ayant trait à la gouvernance de la société, notamment la *Loi sur les personnes morales*, des lettres patentes, des lettres patentes supplémentaires ou des règlements administratifs.

## Non-application de la Loi de 2006 sur la législation

(11) La partie III (Règlements) de la *Loi de 2006 sur la législation* ne s'applique pas aux arrêtés pris en vertu du présent article.

## Approbation de la convention de fusion par le ministre

(12) Lorsque la société lui fournit une convention de fusion conformément aux directives données en application de la disposition 5 du paragraphe (2), le ministre peut la modifier et l'approuver en tout ou en partie.

## Approbation par le ministre de la requête en vue de la fusion

(13) La société ne doit pas présenter une requête en vue de la fusion en vertu du paragraphe 113 (4) de la *Loi sur les personnes morales* sans avoir reçu l'approbation préalable du ministre.

## Nomination d'un superviseur en vue de la restructuration

48 (1) Le ministre peut nommer un superviseur chargé de mettre en application ou de faciliter la mise en application d'un arrêté pris en vertu de l'article 47 si, selon le cas :

a) une société concernée ne s'est pas conformée à l'arrêté;

b) il est d'avis qu'il existe des retards injustifiés, une absence de progrès ou un désaccord entre ou parmi les parties concernées qui empêche ou empêchera vraisemblablement une société concernée de se conformer à l'arrêté.

## Application d'autres dispositions

(2) Si le ministre a l'intention de nommer un superviseur en vertu du paragraphe (1), les paragraphes 43 (4) à (8) et les paragraphes 45 (2) à (15) s'appliquent avec les adaptations nécessaires.

## Caractère contraignant des décisions

(3) Les membres du conseil d'administration d'une société concernée doivent se conformer aux décisions d'un superviseur nommé en vertu du paragraphe (1) pour faciliter la mise en application d'un arrêté pris en vertu de l'article 47 en ce qui concerne les questions relevant de la compétence du superviseur.

## Incompatibilité avec la Loi sur les personnes morales et d'autres textes

49 Les articles 43 à 48 l'emportent sur les dispositions incompatibles de ce qui suit :

1. La *Loi sur les personnes morales* ou les règlements pris en vertu de cette loi.

2. Les lettres patentes, les lettres patentes supplémentaires ou les règlements administratifs d'une société.

## Transfert de biens détenus à des fins de bienfaisance

50 (1) Si un arrêté pris en vertu de l'article 47 enjoint à une société de transférer des biens qu'elle détient à des fins de bienfaisance, les dons, fiducies, legs et cessions de biens qui font partie des biens visés par le transfert sont réputés faits ou donnés au destinataire.



## Approbation de la proposition par le ministre

(2) Le ministre peut modifier la proposition de fusion et l'approuver en tout ou en partie.

## Convention de fusion

(3) Les sociétés ne doivent pas conclure une convention de fusion en vertu du paragraphe 113 (2) de la Loi sur les personnes morales tant qu'elles n'ont pas reçu l'approbation du ministre prévue au paragraphe (2). La convention de fusion doit être compatible avec la proposition de fusion.

## Approbation de la requête en vue de la fusion par le ministre

(4) Les sociétés ne doivent pas présenter une requête en vue de leur fusion en vertu du paragraphe 113 (4) de la Loi sur les personnes morales sans avoir reçu l'approbation préalable du ministre.

## Directives du ministre

(5) Le ministre peut, à tout moment, donner des directives aux sociétés en ce qui concerne la fusion proposée. Il peut notamment exiger qu'une société lui fournisse des renseignements ou des documents, auquel cas la société est tenue de s'y conformer.

## Restructuration par arrêté du ministre

47 (1) S'il estime qu'il est dans l'intérêt public de le faire, notamment pour améliorer l'efficacité, l'efficience et l'uniformité des services, le ministre peut, par arrêté, ordonner à une société de prendre l'une ou l'autre des mesures suivantes à la date indiquée dans l'arrêté :

1. Fusionner avec une ou plusieurs autres sociétés.
  2. Transférer tout ou partie de ses activités à une ou plusieurs autres sociétés.
  3. Cesser ses activités, les dissoudre ou les liquider.
  4. Accomplir ou s'abstenir d'accomplir un acte nécessaire afin de prendre les mesures visées aux dispositions 1 à 3.
- (2) Le ministre peut, dans l'arrêté, inclure des directives pour que les renseignements suivants lui soient fournis dans le délai indiqué dans l'arrêté :
1. Le plan de mise en application de l'arrêté, notamment en ce qui concerne le transfert d'éléments d'actif et de passif, de droits et d'obligations ainsi que la mutation d'employés.
  2. Le calendrier de mise en application de l'arrêté.
  3. Le budget proposé en ce qui concerne la mise en application de l'arrêté.
  4. Des renseignements à propos de l'état d'avancement de la mise en application de l'arrêté.
  5. Dans le cas d'un arrêté pris en vertu de la disposition 1 du paragraphe (1), une convention de fusion à soumettre à son approbation.
  6. Des renseignements à propos de toute autre question qu'il a précisée.

## Avis de proposition d'arrêté

(3) Si le ministre propose de prendre un arrêté en vertu du paragraphe (1), il donne un avis écrit de la proposition d'arrêté et des éventuelles directives que l'arrêté comprendra, ainsi que les motifs à l'appui, à chaque société concernée.

## Avis aux employés et aux agents négociateurs

(3.1) La société qui reçoit l'avis visé au paragraphe (3) en donne une copie aux employés concernés et à leurs agents négociateurs.

## Droit de présenter des observations

(4) La société peut présenter des observations écrites au ministre dans les 30 jours suivant la réception de l'avis ou dans l'autre délai précisé dans l'avis. Ces observations peuvent porter sur les directives comprises dans l'arrêté, mais pas sur l'arrêté lui-même.

## Décision du ministre à propos des directives

(5) Après avoir étudié les observations écrites de la société ou, en l'absence d'observations, à l'expiration du délai prévu au paragraphe (4), le ministre peut confirmer, révoquer ou modifier les directives comprises dans l'arrêté.

## Avis

(6) Le ministre remet une copie de l'arrêté à chaque société concernée.

3. Prendre des dispositions pour faire ouvrir des comptes bancaires au nom de la société.
4. Autoriser des personnes à signer des documents, notamment financiers, au nom de la société.
5. Engager ou congédier les employés de la société.
6. Adopter, modifier ou abroger les règlements administratifs de la société.
7. Passer et déposer des documents au nom de la société, y compris les requêtes présentées en vertu de la *Loi sur les personnes morales* et les avis et rapports déposés en application de la *Loi sur les renseignements exigés des personnes morales*.

#### Maintien des pouvoirs et fonctions de la société

(6) Si l'acte de nomination précise que la société ou ses membres, ses administrateurs, son directeur général et ses dirigeants continuent d'exercer des pouvoirs ou fonctions pendant le mandat du superviseur, l'exercice de ces pouvoirs ou fonctions par la société ou par ces personnes pendant cette période n'est valide que s'il est approuvé par écrit par le superviseur.

#### Aide

(7) Le superviseur peut, par voie de requête, demander à la Cour supérieure de justice de rendre une ordonnance enjoignant à un agent de la paix de l'aider à occuper les locaux d'une société.

#### Rapport au ministre

(8) Le superviseur présente au ministre les rapports que celui-ci exige.

#### Directives du ministre

(9) Le ministre peut donner au superviseur des directives en ce qui concerne toute question relevant de la compétence du superviseur. Le superviseur est tenu d'y donner suite.

#### Immunité de la Couronne

(10) Sont irrecevables les instances, autres que celles visées au paragraphe (12), introduites contre la Couronne ou le ministre à l'égard de la nomination du superviseur ou d'un acte commis de bonne foi par le superviseur dans l'exercice effectif ou censé tel des pouvoirs ou fonctions que lui attribuent la présente loi ou les règlements, ou pour une manquement qu'il aurait commis dans l'exercice de bonne foi d'une telle fonction ou d'un tel pouvoir.

#### Immunité du superviseur

(11) Sont irrecevables les actions ou autres instances introduites contre le superviseur pour un acte accompli de bonne foi dans l'exercice effectif ou censé tel des pouvoirs ou fonctions que lui attribuent la présente loi ou les règlements, ou pour une négligence ou un manquement qu'il aurait commis dans l'exercice de bonne foi d'une telle fonction ou d'un tel pouvoir.

#### Responsabilité de la Couronne

(12) Malgré les paragraphes 5 (2) et (4) de la *Loi sur les instances introduites contre la Couronne*, le paragraphe (11) du présent article ne dégage pas la Couronne de la responsabilité qu'elle serait autrement tenue d'assumer à l'égard d'un délit civil commis par un superviseur.

#### Incidence sur le conseil

(13) À la nomination du superviseur, les membres du conseil de la société cessent d'occuper leur charge, sauf disposition contraire de l'acte de nomination.

#### Idem

(14) Pendant le mandat du superviseur, les pouvoirs des membres du conseil qui continuent d'occuper leur charge sont suspendus, sauf disposition contraire de l'acte de nomination.

#### Immunité

(15) Sont irrecevables les actions ou autres instances introduites contre un membre ou un ancien membre du conseil pour tout acte accompli par le superviseur après la destitution du membre prévue au paragraphe (13) ou pendant la suspension de ses pouvoirs en application du paragraphe (14).

### RESTRUCTURATION

#### Fusion de sociétés

#### Proposition de fusion

46 (1) Deux sociétés ou plus qui se proposent de fusionner et d'être prorogées en une seule et même société doivent présenter au ministre une proposition de fusion qui contient les renseignements précisés par le ministre sous la forme qu'il précise.

## Décision du ministre

(7) Après avoir étudié les observations écrites de la société ou, en l'absence d'observations, à l'expiration du délai prévu au paragraphe (6), le ministre peut donner suite à sa proposition. Il doit alors donner un avis motivé, par écrit, de sa décision à la société.

## Décision définitive

(8) La décision du ministre est définitive.

## Mesure provisoire

(9) Malgré le paragraphe (4), le ministre peut exercer provisoirement les pouvoirs énoncés au paragraphe (3) si, à son avis, cela est nécessaire pour écarter un danger immédiat pour l'intérêt public ou la santé, la sécurité ou le bien-être d'une personne.

## Avis

(10) Le ministre donne à la société un avis motivé, par écrit, de son exercice provisoire du pouvoir.

## Décision définitive

(11) La décision du ministre d'exercer le pouvoir de façon provisoire est définitive.

## Nomination des membres du conseil

### Membres

44 (1) Si le ministre nomme des membres du conseil d'administration d'une société en vertu de la disposition 4 ou 5 du paragraphe 43 (3), les règles suivantes s'appliquent :

1. Le ministre veille à ce que ces membres ne constituent pas la majorité des membres devant siéger au conseil.
2. Ces membres sont nommés à titre amovible et occupent leur charge pour un mandat d'une durée d'au plus deux ans.
3. Ces membres ne peuvent pas siéger à titre de membres nommés pendant plus de deux années consécutives.
4. Ces membres ont les mêmes droits et responsabilités que les membres élus au conseil d'administration.

### Président

(2) Si le ministre désigne le président du conseil d'administration en vertu de la disposition 6 ou 7 du paragraphe 43 (3), les règles suivantes s'appliquent :

1. Le président peut être désigné parmi les membres du conseil, y compris les membres nommés par le ministre en vertu de la disposition 4 ou 5 du paragraphe 43 (3).

2. Le président occupe sa charge à titre amovible pour une période d'au plus deux ans.

3. Le président ne peut pas occuper sa charge pendant plus de deux années consécutives.

4. En cas de désignation en vertu de la disposition 7 du paragraphe 43 (3), l'ancien président peut demeurer membre du conseil.

## Nomination d'un superviseur

45 (1) Le présent article s'applique si un superviseur est nommé pour administrer et gérer les affaires et les activités d'une société en vertu de la disposition 8 du paragraphe 43 (3).

## Durée du mandat

(2) Le mandat du superviseur est valide pendant une période d'au plus un an sans le consentement de la société. Le lieutenant-gouverneur en conseil peut toutefois le proroger à tout moment.

## Pouvoirs et fonctions du superviseur

(3) Sauf disposition contraire de l'acte de nomination, le superviseur a le droit exclusif d'exercer l'ensemble des pouvoirs et fonctions de la société ainsi que ceux de ses membres, de ses administrateurs, de son directeur général et de ses dirigeants.

## Idem

(4) Le ministre peut, dans l'acte de nomination, préciser les pouvoirs et fonctions du superviseur ainsi que les conditions les régissant.

## Exemples de pouvoirs et fonctions

(5) Sans préjudice de la portée générale du paragraphe (4), le superviseur peut notamment exercer les pouvoirs et fonctions suivants :

1. Administrer et gérer les affaires et les activités de la société.

2. Conclure des contrats au nom de la société.



**Mise à la disposition du public**

(4) Le ministre :

a) peut mettre à la disposition du public les ordres donnés en vertu du présent article;

b) doit mettre à la disposition du public un sommaire de chaque ordre donné en vertu du présent article conformément aux règlements.

**POUVOIRS DU MINISTRE****Pouvoirs du ministre****Motifs**

43 (1) Le ministre peut exercer un pouvoir prévu au paragraphe (3) si, selon le cas :

a) une société ne s'est pas conformée à un ordre de conformité donné en vertu de l'article 42 dans le délai précisé dans l'ordre;

b) il est d'avis qu'il est dans l'intérêt public de le faire.

**Intérêt public**

(2) Lorsqu'il décide si l'exercice d'un pouvoir est dans l'intérêt public en application de l'alinéa (1) b), le ministre peut tenir compte de toute question qu'il estime pertinente, notamment :

a) la qualité de la gestion financière et opérationnelle de la société;

b) les capacités de la société en ce qui concerne sa gouvernance;

c) la qualité des services fournis par la société.

**Pouvoirs**

(3) Pour l'application du paragraphe (1), le ministre peut prendre une ou plusieurs mesures suivantes :

1. Ordonner que la société cesse une activité particulière ou prenne d'autres mesures correctives dans le délai précisé dans l'ordre.

2. Assortir l'acte de désignation de la société visé au paragraphe 33 (1) de conditions ou modifier les conditions existantes.

3. Suspendre, modifier ou révoquer la désignation de la société.

4. Nommer des membres du conseil d'administration de la société dans l'un ou l'autre des cas suivants :

i. des postes sont vacants au sein du conseil,

ii. en l'absence de postes vacants, la nomination d'un membre vise à désigner ce membre à la présidence du conseil en vertu de la disposition 7.

5. Destituer des membres du conseil et en nommer d'autres.

6. Désigner un président du conseil en cas de vacance du poste.

7. Désigner un autre président du conseil à la place du président en exercice.

8. Nommer un superviseur chargé d'administrer et de gérer les affaires et les activités de la société.

**Avis de proposition**

(4) Si le ministre propose de prendre l'une ou l'autre des mesures prévues au paragraphe (3), il donne un avis motivé, par écrit, de sa proposition à la société.

**Mesures immédiates**

(5) Le paragraphe (4) ne s'applique pas dans l'un ou l'autre des cas suivants :

a) le ministre est d'avis que la société a, par sa conduite, acquiescé à sa proposition;

b) la société a consenti à la proposition;

c) le conseil d'administration ne compte pas suffisamment de membres pour constituer le quorum.

**Droit de présenter des observations**

(6) La société qui reçoit l'avis prévu au paragraphe (4) peut présenter des observations écrites au ministre dans les 14 jours suivant la réception de l'avis ou dans l'autre délai précisé dans l'avis.

**Durée** (2) La durée de l'entente de responsabilisation correspond à au moins un des exercices du ministère. Elle peut correspondre à une période plus longue, selon ce que précise le ministre.

#### **Approbation du conseil**

(3) Le conseil d'administration de la société doit approuver l'entente de responsabilisation avant que la société ne conclue l'entente.

#### **Contenu**

(4) L'entente de responsabilisation doit comprendre une exigence selon laquelle la société respecte son enveloppe budgétaire approuvée et toute autre condition prescrite.

#### **Absence d'entente**

(5) Si le ministre et une société n'arrivent pas à se mettre d'accord sur les conditions d'une entente de responsabilisation avant la date établie par le ministre, ce dernier peut fixer les conditions de l'entente.

#### **DIRECTIVES ET ORDRES DE CONFORMITÉ (SOCIÉTÉS)**

#### **Directives du ministre**

**41** (1) Le ministre peut donner des directives aux sociétés, y compris des directives à l'égard de questions financières et administratives et de l'exercice des fonctions que leur attribue le paragraphe 34 (1).

#### **Caractère contraignant des directives**

(2) Les sociétés doivent se conformer aux directives qui leur sont données en vertu du présent article.

#### **Portée générale ou particulière**

(3) Les directives peuvent avoir une portée générale ou particulière.

#### **Primauté du droit**

(4) Il est entendu que, en cas d'incompatibilité entre une directive donnée en vertu du présent article et une disposition de toute loi applicable ou règle de toute loi applicable, la disposition de la loi ou de la règle l'emporte.

#### **Mise à la disposition du public**

(5) Le ministre met chaque directive donnée en vertu du présent article à la disposition du public.

#### **Non-application de la Loi de 2006 sur la législation**

(6) La partie III (Règlements) de la *Loi de 2006 sur la législation* ne s'applique pas aux directives données en vertu du présent article.

#### **Ordre de conformité**

#### **Motifs**

**42** (1) Le directeur peut donner un ordre visé au paragraphe (2) s'il croit, en se fondant sur des motifs raisonnables, qu'une société ne s'est pas conformée à ce qui suit :

a) la présente loi ou les règlements;

b) une condition dont est assorti l'acte de désignation de la société en vertu du paragraphe 33 (2);

c) une entente de responsabilisation conclue en vertu de l'article 40;

d) une directive donnée en vertu de l'article 41.

#### **Ordre**

(2) Pour l'application du paragraphe (1), le directeur peut donner un ordre à la société lui enjoignant de prendre l'une ou l'autre des mesures suivantes ou les deux :

1. Faire ou s'abstenir de faire quoi que ce soit pour assurer la conformité dans le délai précisé dans l'ordre.

2. Préparer, présenter et mettre en application, dans le délai précisé dans l'ordre, un plan pour assurer la conformité.

#### **Caractère contraignant d'un ordre**

(3) La société à laquelle un ordre est signifié en vertu du présent article doit s'y conformer dans le délai qui y est précisé.

#### **Mise à la disposition du public**

(4) Le ministre met les ordres donnés en vertu du présent article à la disposition du public.

## Fonctions

34 (1) Les fonctions d'une société d'aide à l'enfance sont les suivantes :

- a) enquêter sur les allégations ou les preuves selon lesquelles des enfants peuvent avoir besoin de protection;
- b) protéger les enfants en cas de besoin;

c) offrir aux familles des services, notamment d'orientation ou de counseling, pour protéger les enfants ou pour prévenir les situations nécessitant la protection d'enfants;

d) fournir des soins aux enfants qui lui sont confiés à cette fin sous le régime de la présente loi;

e) exercer une surveillance sur les enfants qui lui sont confiés à cette fin sous le régime de la présente loi;

f) placer des enfants en vue de leur adoption sous le régime de la partie VIII (Adoption et délivrance de permis relatifs à l'adoption);

g) exercer les autres fonctions que lui attribuent la présente loi ou les règlements ou toute autre loi.

## Normes prescrites

(2) La société :

- a) fournit, dans l'exercice de ses fonctions, des services conformes aux normes prescrites;
- b) respecte les modalités prescrites.

## Questions de gouvernance

### Représentants inuits, métis ou de Premières Nations au conseil

35 (1) La société qui fournit des services aux enfants et aux familles inuits, métis ou de Premières Nations doit comprendre, au sein de son conseil d'administration, le nombre prescrit de représentants inuits, métis ou de Premières Nations. Ces représentants doivent être nommés de la manière et pour des mandats prescrites.

### Employés de la société

(2) Les employés d'une société ne doivent pas être membres de son conseil d'administration.

### Règlements administratifs

(3) Les règlements administratifs d'une société doivent inclure les dispositions prescrites.

## Immunité

36 Sont irrecevables les actions ou autres instances introduites contre un membre du conseil d'administration ou un dirigeant ou un employé d'une société pour un acte accompli de bonne foi dans l'exercice effectif ou censé tel de ses fonctions ou pour une négligence ou un manquement qu'il aurait commis dans l'exercice de bonne foi de ces fonctions.

### Nomination d'un directeur local

37 La société nomme un directeur local qui possède les qualités requises prescrites et exerce les pouvoirs et fonctions prescrites.

### Désignation de lieux sûrs

38 Pour l'application de la partie V (Protection de l'enfance), le directeur local peut désigner un lieu ou une catégorie de lieux comme lieux sûrs.

## FINANCEMENT ET ENTENTES DE RESPONSABILISATION

### Financement

#### Païement par le ministre

39 (1) Le ministre verse à chaque société une somme calculée conformément aux règlements et prélevée sur les crédits affectés à cette fin par la Législature.

#### Mode de paiement

(2) La somme payable à une société en application du paragraphe (1), y compris les avances consenties sur les dépenses avant qu'elles soient engagées, est versée aux dates et de la manière que précise le ministre.

### Entente de responsabilisation

40 (1) La réception de fonds est subordonnée à la conclusion par chaque société d'une entente de responsabilisation avec le ministre.



a) la présente loi ou les règlements;

b) une directive donnée en vertu de l'article 31;

c) dans le cas d'un fournisseur de services, une entente visée à l'alinéa 24 c) ou à l'article 25;

d) dans le cas d'un organisme responsable, selon le cas :

(i) une entente visée à l'alinéa 24 (d),

(ii) une condition prévue au paragraphe 29 (2) et dont est assorti son acte de désignation,

(iii) le paragraphe 29 (5) (fonctions des organismes responsables).

## Ordre

(2) Pour l'application du paragraphe (1), le superviseur de programme peut donner un ordre au fournisseur de services ou à l'organisme responsable leur enjoignant de prendre l'une ou l'autre des mesures suivantes ou les deux :

1. Faire ou s'abstenir de faire quoi que ce soit pour assurer la conformité dans le délai précisé dans l'ordre.

2. Préparer, présenter et mettre en application, dans le délai précisé dans l'ordre, un plan pour assurer la conformité.

## Caractère contraignant d'un ordre

(3) Le fournisseur de services ou l'organisme responsable auquel un ordre est signifié en vertu du présent article doit s'y conformer dans le délai qui y est précisé.

## Mise à la disposition du public

(4) Le ministre peut mettre les ordres donnés en vertu du présent article à la disposition du public.

## Mise à la disposition du public

(4) Le ministre :

a) peut mettre à la disposition du public les ordres donnés en vertu du présent article;

b) doit mettre à la disposition du public un sommaire de chaque ordre donné en vertu du présent article conformément aux règlements.

## Non-conformité

(5) Si le fournisseur de services ou l'organisme responsable ne se conforme pas à un ordre qui lui a été donné en vertu du présent article dans le délai précisé dans l'ordre, le ministre peut mettre fin à tout ou partie du financement alloué au fournisseur ou à l'organisme.

## SOCIÉTÉS D'AIDE À L'ENFANCE

## Société d'aide à l'enfance

## Désignation

33 (1) Le ministre peut désigner une agence comme société d'aide à l'enfance à l'égard, d'une part, d'un territoire de compétence précisé et, d'autre part, de tout ou partie des fonctions d'une société énoncées au paragraphe 34 (1).

## Désignation assortie de conditions

(2) En ce qui concerne tout ou partie des fonctions d'une société énoncées au paragraphe 34 (1), le ministre peut assortir l'acte de désignation de conditions et peut à tout moment modifier ou annuler ces conditions ou en imposer de nouvelles.

## Modification de l'acte de désignation

(3) Le ministre peut à tout moment modifier l'acte de désignation afin soit de prévoir que la société n'est plus désignée pour exercer une ou des fonctions particulières énoncées au paragraphe 34 (1), soit de modifier son territoire de compétence.

## Société réputée être un conseil local

(4) Pour l'application de la Loi de 2006 sur le Régime de retraite des employés municipaux de l'Ontario et de la Loi sur les conflits d'intérêts municipaux, la société est réputée être un conseil local de chaque municipalité où elle exerce sa compétence.

## Non des mandataires de la Couronne

(5) La société ainsi que ses membres, employés et mandataires ne sont pas des mandataires de la Couronne du chef de l'Ontario et ne doivent pas se faire passer pour tels.

## Immunité de la Couronne

(6) Sont irrecevables les actions ou autres instances introduites contre la Couronne du chef de l'Ontario pour un acte accompli ou une omission commise par une société ou ses membres, dirigeants, employés ou mandataires.

## Organismes responsables

### Désignation

29 (1) Le ministre peut désigner une entité comme organisme responsable.

### Conditions relatives à la désignation

(2) Le ministre peut assortir la désignation faite en vertu du présent article de conditions et il peut, à tout moment, modifier ou annuler ces conditions ou en imposer de nouvelles.

### Révocation de la désignation

(3) Le ministre peut révoquer la désignation faite en vertu du présent article.

### Catégories d'organismes responsables

(4) Le ministre peut affecter des organismes responsables aux différentes catégories d'organismes responsables établies par les règlements.

### Fonctions des organismes responsables

(5) Chaque organisme responsable exerce les fonctions que les règlements attribuent à sa catégorie.

### Liste des organismes responsables et des catégories

(6) Le ministre tient une liste des organismes responsables et de leurs catégories.

### Mise à la disposition du public

(7) Le ministre met la liste à la disposition du public.

### Conformité des placements à la Loi, aux règlements et aux directives

30 Aucun fournisseur de services ne doit placer un enfant dans un établissement, si ce n'est conformément à la présente loi, aux règlements et aux directives données en vertu de la présente loi.

### DIRECTIVES ET ORDRES DE CONFORMITÉ (ORGANISMES RESPONSABLES ET FOURNISSEURS DE SERVICES)

### Directives du ministre

### Non-application

31 (1) Le présent article et l'article 32 ne s'appliquent pas à l'égard :

- a) des titulaires de permis délivré sous le régime de la partie IX (Permis d'établissement), lorsqu'ils agissent dans le cadre des attributions prévues par cette partie;

- b) des sociétés, lorsqu'elles exercent les fonctions que leur attribue le paragraphe 34 (1).

### Directives

(2) Le ministre peut donner des directives aux fournisseurs de services et aux organismes responsables à l'égard de toute question prescrite.

### Caractère contraignant des directives

(3) Les fournisseurs de services et les organismes responsables doivent se conformer aux directives qui leur sont données en vertu du présent article.

### Portée générale ou particulière

(4) Les directives peuvent avoir une portée générale ou particulière.

### Primauté du droit

(5) Il est entendu que, en cas d'incompatibilité entre une directive donnée en vertu du présent article et une disposition de toute loi applicable ou règle de toute loi applicable, la disposition de la loi ou de la règle l'emporte.

### Mise à la disposition du public

(6) Le ministre met chaque directive donnée en vertu du présent article à la disposition du public.

### Non-application de la Loi de 2006 sur la législation

(7) La partie III (Règlements) de la Loi de 2006 sur la législation ne s'applique pas aux directives données en vertu du présent article.

### Ordre de conformité

### Motifs

32 (1) Le superviseur de programme peut donner un ordre visé au paragraphe (2) s'il croit, en se fondant sur des motifs raisonnables, qu'un fournisseur de services ou un organisme responsable ne s'est pas conformé à ce qui suit :

b) d'autre part, prend dûment en considération l'opinion et les désirs de l'enfant eu égard à son âge et à son degré de maturité.

**Application de la Loi de 1996 sur le consentement aux soins de santé**

(8) Si le service fourni est un traitement auquel la Loi de 1996 sur le consentement aux soins de santé s'applique, les dispositions de cette loi qui se rapportent au consentement s'appliquent à la place du présent article.

**Service de counseling fourni à l'enfant de 12 ans ou plus**

22 (1) Le fournisseur de services peut, avec le seul consentement de l'enfant, fournir un service de counseling à un enfant de 12 ans ou plus. Toutefois, si l'enfant a moins de 16 ans, le fournisseur de services discute avec lui, le plus tôt possible, compte tenu des circonstances, de l'avantage de faire participer son parent.

**Application de la Loi de 1996 sur le consentement aux soins de santé**

(2) Si le service de counseling fourni est un traitement auquel la Loi de 1996 sur le consentement aux soins de santé s'applique, les dispositions de cette loi qui se rapportent au consentement s'appliquent à la place du paragraphe (1).

**PARTIE III  
FINANCEMENT ET RESPONSABILISATION**

**Définition**

23 La définition qui suit s'applique à la présente partie.

«organisme responsable» Entité désignée comme organisme responsable en vertu du paragraphe 29 (1).

**FINANCEMENT DES SERVICES ET DES ORGANISMES RESPONSABLES**

**Prestation directe ou indirecte de services**

24 Le ministre peut :

- a) fournir des services;
- b) mettre sur pied, faire fonctionner et entretenir des locaux afin d'y fournir des services;
- c) allouer des fonds, conformément à des ententes, à des personnes, des agences, des municipalités, des organisations et d'autres entités prescrites :
- (i) pour la prestation ou la coordination de services par ces dernières,
- (ii) pour l'acquisition, l'entretien ou le fonctionnement des locaux utilisés en vue de la prestation ou de la coordination de services,
- (iii) pour la constitution de groupes ou comités consultatifs à l'égard des services,
- (iv) pour des activités de recherche, d'évaluation, de planification, de développement, de coordination ou de reconception à l'égard de services,
- (v) pour toute autre fin prescrite;
- d) allouer des fonds, conformément à des ententes, à des organismes responsables à l'égard de l'exercice des fonctions visées au paragraphe 29 (5).

**Services aux personnes de plus de 18 ans**

25 Le ministre peut fournir des services et allouer des fonds, conformément à des ententes, pour la prestation de services à des personnes qui ne sont pas des enfants, et à leur famille, comme s'il s'agissait d'enfants.

**Comité consultatif du ministre**

26 Le ministre peut nommer les membres d'un comité consultatif du ministre, établi par décret du lieutenant-gouverneur en conseil, pour le conseiller sur les questions liées au bien-être de l'enfance et de la famille.

**Garantie**

27 Le ministre peut exiger, comme condition d'un paiement effectué en vertu de la présente partie ou des règlements, que le bénéficiaire des fonds les garantisse au moyen d'une hypothèque, d'un privilège, d'une charge, d'un avertissement ou de l'inscription de l'entente, ou de la manière qu'il précise.

**Conditions relatives au transfert des éléments d'actif**

28 Aucun fournisseur de services ou organisme responsable ne doit transférer ou céder une partie de ses éléments d'actif acquis grâce à l'aide financière de la province de l'Ontario, si ce n'est conformément aux règlements ou aux conditions d'une entente conclue avec le ministre.



**Consentement du mineur**

(5) Dans le cadre de la présente loi, n'est pas nul le consentement ou le retrait du consentement d'une personne, ou la participation d'une personne à une entente ou la résiliation, par cette personne, d'une entente, du seul fait que la personne a moins de 18 ans.

**Exception : partie X**

(6) Le présent article ne s'applique pas à l'égard de la collecte, de l'utilisation ou de la divulgation de renseignements personnels sous le régime de la partie X (Renseignements personnels).

**Consentement aux services****Consentement : personne de 16 ans et plus**

21 (1) Le fournisseur de services ne peut fournir un service à une personne de 16 ans ou plus qu'avec le consentement de cette personne, sauf si le tribunal ordonne, en vertu de la présente loi, que le service soit fourni à cette personne.

**Consentement à un service****Consentement : personne de 16 ans ou plus**

21 (1) Sous réserve de l'alinéa (2) b) et du paragraphe (4), le fournisseur de services peut fournir un service à une personne de 16 ans ou plus uniquement avec le consentement de cette personne, sauf si le tribunal ordonne, en vertu de la présente loi, que le service soit fourni à cette personne.

**Consentement : enfant de moins de 16 ans ou enfant confié aux soins d'une société**

(2) Sauf disposition contraire de la présente loi, le fournisseur de services ne peut fournir des soins en établissement à un enfant :

- a) qu'avec le consentement d'un parent de l'enfant, si celui-ci a moins de 16 ans;
- b) qu'avec le consentement de la société, si l'enfant est confié à la garde légitime d'une société.

**Exception — Partie V**

(3) Le paragraphe (1) ne s'applique pas si le service est fourni à un enfant sous le régime de la partie V (Protection de l'enfance).

**Exception — Partie VI**

(4) Les paragraphes (1) et (2) ne s'appliquent pas si le service est fourni à un adolescent sous le régime de la partie VI (Justice pour les adolescents).

**Congé du placement en établissement**

(5) L'enfant placé en établissement avec le consentement visé au paragraphe (1) ou (2) ne peut obtenir son congé, selon le cas :

- a) qu'avec le consentement qui serait exigé pour un nouveau placement en établissement;

b) que conformément à l'article 75 (avis de résiliation), si le placement est effectué aux termes d'une entente conclue en vertu du paragraphe 74 (1) (ententes relatives à des soins temporaires);

c) que conformément au paragraphe 76 (4) (avis de résiliation de l'entente), si le placement est effectué aux termes d'une entente conclue en vertu du paragraphe 76 (1) (ententes avec des jeunes de 16 et 17 ans).

**Transfert à un autre établissement**

(6) L'enfant placé en établissement avec le consentement visé au paragraphe (1) ou (2) ne doit pas être transféré d'un établissement à un autre, à moins que le consentement qui serait exigé pour un nouveau placement en établissement ne soit donné.

**Opinion et désirs de l'enfant**

(7) Avant de placer un enfant dans un établissement, de lui donner son congé d'un établissement ou de le transférer d'un établissement à un autre avec le consentement visé au paragraphe (2), le fournisseur de services prend dûment en considération l'opinion et les désirs de l'enfant en égard à son âge et à son degré de maturité.

**Opinion et désirs de l'enfant**

(7) Avant de placer un enfant dans un établissement, de lui donner son congé d'un établissement ou de le transférer d'un établissement à un autre avec le consentement visé au paragraphe (2), le fournisseur de services :

- a) d'une part, veille à ce que l'enfant et la personne dont le consentement est exigé par le paragraphe (2) soient informés des motifs du placement, du congé ou du transfert et à ce qu'ils comprennent, dans la mesure du possible, ces motifs;

## Pouvoirs

(4) La personne nommée en application du paragraphe (1) possède, pour les besoins de son examen, tous les pouvoirs d'un superviseur de programme nommé en vertu du paragraphe 52 (2).

### Examen et rapport : délai de 30 jours

(5) La personne nommée en application du paragraphe (1) doit, dans les 30 jours suivant sa nomination, terminer son examen, énoncer dans un rapport ses conclusions et recommandations, y compris, le cas échéant, les raisons pour lesquelles elle n'a pas tenu d'audience, et communiquer des exemplaires de son rapport aux personnes suivantes :

— a) l'auteur de la plainte;

— a) chacun des auteurs de la plainte, que ce soit en tant que particulier ou en tant que membre d'un groupe;

b) le fournisseur de services;

c) le ministre.

### Communication de la décision du ministre

19 (1) Si, après avoir reçu le rapport visé au paragraphe 18 (5), le ministre décide de prendre des mesures relativement à la plainte, il communique sa décision à l'auteur de la plainte et au fournisseur de services:

### Communication de la décision du ministre

19 (1) Si, après avoir reçu le rapport visé au paragraphe 18 (5), le ministre décide de prendre des mesures relativement à la plainte, il communique sa décision au fournisseur de services et à chaque personne qui présente une plainte, que ce soit en tant que particulier ou en tant que membre d'un groupe.

### Autres recours

(2) La décision du ministre visée au paragraphe (1) ne porte pas atteinte aux autres recours qui peuvent être disponibles.

## CONSENTEMENT ET SERVICES VOLONTAIRES

### Consentements et ententes

20 (1) Les définitions qui suivent s'appliquent au présent article.

«*jouit de toutes ses facultés mentales*» Etat de celui qui est capable de comprendre et de saisir l'objet d'un consentement ou d'une entente, y compris les conséquences qui résultent du fait qu'il donne, refuse ou retire son consentement ou qu'il conclut ou non une entente ou la résilie. («*capacity*»)

«*membre de la parenté le plus proche*» Relativement à une personne de moins de 16 ans, s'entend de la personne qui en la garde légitime. Relativement à une personne de 16 ans ou plus, s'entend de la personne qui serait autorisée à donner ou à refuser son consentement à un traitement au nom de cette personne en vertu de la Loi de 1996 sur le consentement aux soins de santé si cette personne était incapable à l'égard du traitement sous le régime de cette loi. («*nearest relative*»)

### Éléments du consentement valide

(2) Dans le cadre de la présente loi, le consentement ou le retrait du consentement d'une personne, la participation d'une personne à une entente ou la résiliation, par une personne, d'une entente est valide si, au moment de donner ou de retirer son consentement ou de conclure ou de résilier l'entente, la personne :

a) jouit de toutes ses facultés mentales;

b) est suffisamment informée de l'objet du consentement ou de l'entente, de ses conséquences et des solutions de rechange;

c) donne ou retire son consentement, ou signe l'entente ou l'avis de résiliation volontairement, sans contrainte ou abus d'influence;

d) a eu l'occasion suffisante d'obtenir des conseils de personnes indépendantes.

### Personne qui ne jouit pas de toutes ses facultés mentales

(3) Le membre de la parenté d'une personne le plus proche peut, au nom de cette personne, donner ou retirer un consentement, ou participer à une entente ou la résilier, s'il a été établi, en fonction d'une évaluation effectuée dans l'année précédant le moment où le membre de la parenté le plus proche agit au nom de la personne, que celle-ci ne jouit pas de toutes ses facultés mentales.

### Exceptions : article 177 et alinéa 73 (2) n)

(4) Le paragraphe (3) ne s'applique ni au consentement donné en vertu de l'article 177 (consentement à l'adoption) ni au consentement parental visé à l'alinéa 73 (2) n) (enfant ayant besoin de protection).

**Idem**

(2) Le fournisseur de services effectuait ou fait effectuer un examen, conformément au protocole mis au point en application du paragraphe (1), des plaintes présentées par les personnes suivantes et cherche à les résoudre :

a) l'enfant qui reçoit des soins;

b) un parent de l'enfant ou de l'adolescent;

c) une autre personne qui représente l'enfant ou l'adolescent.

**Protocole de règlement des plaintes**

17 (1) Le fournisseur de services qui fournit des soins en établissement à des enfants ou à des adolescents ou qui place des enfants ou des adolescents en établissement écrit, conformément aux règlements, pour entendre et régler ce qui suit :

a) les plaintes relatives aux prétendues violations des droits que la présente partie accorde aux enfants qui reçoivent des soins;

b) les plaintes présentées par les enfants qui reçoivent des soins ou les autres personnes concernées par les conditions ou les restrictions imposées aux visiteurs en vertu du paragraphe 10 (1) ou les suspensions de visites décidées en vertu du paragraphe 10 (2).

**Intervenant provincial en faveur des enfants et des jeunes**

(2) Le protocole mis au point en application du paragraphe (1) doit prévoir que le fournisseur de services informe les enfants qui reçoivent des soins qu'ils peuvent demander l'aide de l'intervenant provincial en faveur des enfants et des jeunes pour faire ce qui suit :

a) présenter la plainte visée à l'alinéa (1) a) ou b);

b) demander en vertu du paragraphe 18 (1) l'examen supplémentaire de la plainte une fois l'examen du fournisseur de services terminé.

**Examen de la plainte**

(3) Le fournisseur de services effectuait ou fait effectuer un examen, conformément au protocole mis au point en application de l'alinéa (1) a) ou b), des plaintes présentées par une des personnes suivantes et cherche à les résoudre :

a) un enfant ou un groupe d'enfants recevant des soins;

b) le parent d'un enfant recevant des soins qui présente une plainte;

c) une autre personne qui représente l'enfant recevant des soins et qui présente une plainte;

d) une personne qui est concernée par une condition ou une restriction imposée aux visiteurs en vertu du paragraphe 10 (1) ou une suspension de visites décidée en vertu du paragraphe 10 (2).

**Réponse aux plaignants**

(4) À l'issue de l'examen qu'il effectuait en application du paragraphe (3), le fournisseur de services informe chacune des personnes qui ont présenté la plainte, que ce soit en tant que membre d'un groupe, des résultats de l'examen.

**Examen supplémentaire**

18 (1) Si une personne visée au paragraphe 17 (2), d'une part, n'est pas satisfaite du résultat de l'examen effectué en application de ce paragraphe à la suite de sa plainte et, d'autre part, demande par écrit que le ministre charge une personne d'effectuer un examen supplémentaire, le ministre nomme à cette fin une personne qui n'est pas à l'emploi du fournisseur de services.

**Examen supplémentaire**

18 (1) Si la personne visée au paragraphe 17 (3) présente une plainte, que ce soit en tant que particulier ou en tant que membre d'un groupe, et n'est pas satisfaite des résultats de l'examen effectué en application de ce paragraphe et qu'elle demande par écrit que le ministre charge une personne d'effectuer un examen supplémentaire de la plainte, le ministre nomme à cette fin une personne qui n'est pas à l'emploi du fournisseur de services.

**Idem**

(2) La personne nommée en application du paragraphe (1) doit examiner la plainte conformément aux règlements et peut tenir une audience à cet effet.

**Procédure**

(3) La Loi sur l'exercice des compétences légales ne s'applique pas à l'audience tenue en vertu du paragraphe (2).



**Décisions : critères et garanties**  
(3) Les fournisseurs de services veillent à ce que les décisions concernant les intérêts et les droits des enfants et des adolescents, ainsi que ceux de leurs parents, soient, d'une part, prises en fonction de critères clairs et uniformes et, d'autre part, assujetties à des garanties d'ordre procédural.

**Droit des enfants et des adolescents d'être entendus et représentés**  
(2) Les fournisseurs de services veillent à ce que les enfants et les adolescents, ainsi que leurs parents, aient la possibilité d'être entendus et représentés lorsque sont prises des décisions concernant leurs intérêts et d'exprimer leurs préoccupations relativement aux services qu'ils reçoivent.

**Exception**  
(3) Le paragraphe (2) ne s'applique ni aux enfants ou adolescents ni à leurs parents s'il existe un motif valable de ne pas leur accorder la possibilité d'être entendus ou représentés comme le prévoit ce paragraphe.

**Décisions : critères et garanties**  
(4) Les fournisseurs de services veillent à ce que les décisions concernant les intérêts et les droits des enfants et des adolescents, ainsi que ceux de leurs parents, soient, d'une part, prises en fonction de critères clairs et uniformes et, d'autre part, assujetties aux garanties appropriées d'ordre procédural.

**Renseignements visibles et accessibles concernant l'intervenant provincial en faveur des enfants et des jeunes**

(5) Les fournisseurs de services doivent :  
a) afficher bien en vue dans leurs locaux, d'une manière visible pour les personnes recevant des services, un avis signalant l'existence et le rôle de l'intervenant provincial en faveur des enfants et des jeunes ainsi que la façon de prendre contact avec lui;  
b) sur demande, rendre accessibles les documents d'information produits par l'intervenant provincial en faveur des enfants et des jeunes.

**Services en français**

15 Lorsque cela est approprié, les fournisseurs de services offrent leurs services aux enfants et aux adolescents, ainsi qu'à leur famille, en français.

**RÈGLEMENT EXTRAJUDICIAIRE DES DIFFÉRENDS**

**Méthode prescrite de règlement extrajudiciaire des différends**

16 (1) Si un enfant a ou peut avoir besoin de protection sous le régime de la présente loi, la société étudie si une méthode prescrite de règlement extrajudiciaire des différends pourrait faciliter le règlement de questions qui se rapportent à l'enfant ou à un programme de soins à lui fournir.

**Enfant inuit, métis ou de Premières Nations**

(2) Si les questions visées au paragraphe (1) se rapportent à un enfant inuit, métis ou de Premières Nations, la société consulte un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient en vue de décider si un processus de règlement extrajudiciaire des différends établi par les bandes et les communautés ou un autre processus semblable prescrit pourrait faciliter le règlement de ces questions.

**Avocat des enfants**

(3) Si la société ou une personne, y compris un enfant, qui reçoit des services de bien-être de l'enfance propose l'application d'une méthode ou d'un processus de règlement extrajudiciaire des différends visé au paragraphe (1) ou (2) pour faciliter le règlement d'une question qui se rapporte à un enfant ou à un programme de soins à lui fournir, l'avocat des enfants peut représenter l'enfant s'il est d'avis que cela est approprié.

**Avis à la bande ou à la communauté**

(4) Si elle propose ou se fait proposer l'application, en vertu du paragraphe (3), d'une méthode ou d'un processus de règlement extrajudiciaire des différends visé au paragraphe (1) ou (2) relativement à une question qui se rapporte à un enfant inuit, métis ou de Premières Nations, la société en avise un représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient.

**PLAINTES ET EXAMENS**

**Protocole de règlement des plaintes**

17 (1) Le fournisseur de services qui fournit des soins en établissant un protocole écrit, conformément aux règlements, pour entendre et régler les plaintes relatives aux prétendues violations des droits que la présente partie accorde aux enfants qui reçoivent des soins.

## Exception

(3) Malgré le paragraphe (2), le fournisseur de services ne peut pas suspendre les visites des personnes suivantes, sauf si le directeur provincial établit que cette mesure est nécessaire pour assurer la sécurité publique ou la sécurité des membres du personnel ou des adolescents présents dans le lieu :

- a) l'intervenant provincial en faveur des enfants et des jeunes et les membres de son personnel;
- b) l'ombudsman nommé en vertu de la *Loi sur l'ombudsman* et les membres de son personnel;
- c) un député à l'Assemblée législative de l'Ontario ou au Parlement du Canada.

## Libertés personnelles

11 L'enfant qui reçoit des soins a les droits suivants :

- a) le droit d'avoir un niveau raisonnable de vie privée et de jouir, raisonnablement, de la possession de ses effets personnels, sous réserve de l'article 152;
- b) le droit de recevoir un enseignement lié à ses croyances, à son identité communautaire et à son identité culturelle, et le droit de participer aux activités connexes de son choix, sous réserve de l'article 13.

## Programme de soins

12 (1) L'enfant qui reçoit des soins a droit à un programme de soins conçu pour répondre à ses besoins particuliers. Ce programme doit être élaboré dans les 30 jours suivant l'admission de l'enfant ou de l'adolescent dans un établissement.

## Droit de recevoir des soins

(2) L'enfant qui reçoit des soins a les droits suivants :

- a) le droit de participer à l'élaboration du programme de soins qui le concerne et aux modifications qui y sont apportées;
- b) le droit de recevoir des repas qui sont équilibrés et de bonne qualité et qui conviennent à l'enfant et à l'adolescent;
- b) le droit d'avoir accès à de la nourriture de bonne qualité et qui convient à l'enfant ou à l'adolescent, y compris des repas équilibrés;

- c) le droit de disposer de vêtements de bonne qualité et qui conviennent à l'enfant et à l'adolescent, compte tenu de sa taille, de ses activités et des conditions météorologiques;
- d) le droit de recevoir, autant que possible en milieu communautaire, des soins médicaux et dentaires, sous réserve de l'article 13, à intervalles réguliers et lorsqu'il en a besoin;

- e) le droit de recevoir, autant que possible en milieu communautaire, un enseignement qui correspond à ses aptitudes et à ses talents;

- f) le droit de participer, autant que possible en milieu communautaire, à des activités récréatives et sportives qui conviennent à ses aptitudes et à ses intérêts;

- f) le droit de participer, autant que possible en milieu communautaire, à des activités récréatives, sportives et créatives qui conviennent à ses aptitudes et à ses intérêts.

## Consentement parental

13 Sous réserve du paragraphe 91 (7) et des articles 107 et 108 (garde de l'enfant pendant l'ajournement, ordonnance confiant un enfant aux soins d'une société de façon provisoire ou prolongée), le parent d'un enfant qui reçoit des soins garde les droits qu'il peut avoir :

- a) pour diriger l'éducation de l'enfant ou de l'adolescent et l'enseignement qui lui est dispensé dans le respect des croyances de l'enfant ou de l'adolescent, de son identité communautaire et de son identité culturelle;

- b) pour accorder son consentement au nom d'un enfant ou d'un adolescent qui est incapable à l'égard d'un traitement, s'il est le mandataire spécial de l'enfant ou de l'adolescent conformément à l'article 20 de la *Loi de 1996 sur le consentement aux soins de santé*.

OBLIGATIONS DES FOURNISSEURS DE SERVICES À L'ÉGARD DES DROITS DES ENFANTS ET DES ADOLESCENTS

## Respect des droits des enfants et des adolescents

14 (1) Les fournisseurs de services doivent respecter les droits des enfants et des adolescents énoncés dans la présente loi.

## Droit des enfants et des adolescents d'être entendus et représentés

(2) Les fournisseurs de services veillent à ce que les enfants et les adolescents, ainsi que leurs parents, aient la possibilité, lorsque cela est approprié, d'être entendus et représentés lorsque sont prises des décisions concernant leurs intérêts et d'exprimer leurs préoccupations relativement aux services qu'ils reçoivent.

- c) le droit d'envoyer et de recevoir des communications écrites qui ne sont ni lues, ni examinées ni censurées par une autre personne, sous réserve des paragraphes (3) et (4).

### **Cas où l'enfant est confié aux soins d'une société de façon prolongée**

- (2) L'enfant qui reçoit des soins et qui est confié aux soins d'une société de façon prolongée en application d'une ordonnance rendue en vertu de la disposition 3 du paragraphe 98 (1) ou de l'alinéa 113 (1) c) n'a pas le droit reconnu d'avoir des conversations avec un membre de sa famille ou de sa famille élargie, de lui rendre visite ou de recevoir sa visite, si ce n'est en application d'une ordonnance de visite rendue sous le régime de la partie V (Protection de l'enfance) ou d'une ordonnance de communication ou d'un accord de communication rendu ou conclu sous le régime de la partie VIII (Adoption et délivrance de permis relatifs à l'adoption).

### **Examen des communications écrites destinées à un enfant recevant des soins**

- (3) Sous réserve du paragraphe (4), les communications écrites qui sont destinées à un enfant recevant des soins :

- a) peuvent être ouvertes par le fournisseur de services ou un membre de son personnel en présence de l'enfant ou de l'adolescent et examinées dans le but de vérifier si elles contiennent des articles qu'interdit le fournisseur;
- b) peuvent être examinées ou lues par le fournisseur de services ou un membre de son personnel en présence de l'enfant ou de l'adolescent, sous réserve de l'alinéa c), si le fournisseur croit, en se fondant sur des motifs raisonnables, que le contenu de ces communications peut causer des maux physiques ou affectifs à l'enfant ou à l'adolescent;
- c) ne doivent être ni examinées ni lues par le fournisseur de services ou un membre de son personnel si elles proviennent de l'avocat de l'enfant ou de l'adolescent de la personne visée au sous-alinéa (1) b) (i), (ii), (iii) ou (iv) ou lui sont destinées;
- d) ne doivent être ni censurées ni retenues, les articles qu'interdit le fournisseur de services pouvant toutefois en être retirés et ne pas être remis à l'enfant ou à l'adolescent.

### **Examen des communications écrites destinées à un adolescent**

- (4) Les communications écrites qu'envoie un adolescent détenu dans un lieu de détention provisoire ou gardé dans un lieu de garde en milieu fermé ou en milieu ouvert, ou qui lui sont destinées :
- a) peuvent être ouvertes par le fournisseur de services ou un membre de son personnel en présence de l'adolescent et examinées dans le but de vérifier si elles contiennent des articles qu'interdit le fournisseur;
- b) peuvent être examinées ou lues par le fournisseur de services ou un membre de son personnel et retenues intégralement ou partiellement si le fournisseur ou le membre de son personnel croit, en se fondant sur des motifs raisonnables, que le contenu de ces communications peut :

- (i) soit nuire à l'intérêt véritable de l'adolescent, à la sécurité publique ou à la sécurité du lieu de détention ou de garde,
- (ii) soit renfermer des éléments interdits par la *Loi sur le système de justice pénale pour les adolescents* (Canada) ou une ordonnance judiciaire;
- c) ne doivent être ni examinées ni lues en vertu de l'alinéa b) si elles proviennent de l'avocat de l'adolescent ou lui sont destinées;
- d) ne doivent être ni ouvertes ni examinées en vertu de l'alinéa a), ni examinées ni lues en vertu de l'alinéa b), si elles proviennent d'une personne visée au sous-alinéa (1) b) (ii), (iii) ou (iv) ou lui sont destinées.

### **Définition**

- (5) La définition qui suit s'applique au présent article.

### **Visiteurs : conditions et restrictions applicables**

- 10 (1) Le fournisseur de services peut imposer aux personnes qui rendent visite à un adolescent dans un lieu de détention provisoire ou un lieu de garde en milieu ouvert ou en milieu fermé les conditions et les restrictions qui sont nécessaires pour assurer la sécurité des membres du personnel ou des adolescents présents dans le lieu.

### **Suspension des visites en situation d'urgence**

- (2) Le fournisseur de services qui a des motifs raisonnables de croire qu'il existe dans un lieu de détention provisoire ou un lieu de garde en milieu ouvert ou en milieu fermé, ou dans la collectivité, une situation d'urgence pouvant présenter un danger pour les membres du personnel ou les adolescents présents dans le lieu peut suspendre les visites jusqu'à ce qu'il ait des motifs raisonnables de croire que la situation est réglée et qu'il n'y a plus de danger.



## Restrictions applicables à l'utilisation de contentions mécaniques

6 Aucun fournisseur de services ou parent de famille d'accueil ne doit utiliser des contentions mécaniques, ni en autoriser l'utilisation, sur un enfant ou un adolescent à qui il fournit des services, sauf dans la mesure autorisée par la partie VI (Justice pour les adolescents), la partie VII (Mesures extraordinaires) et les règlements.

### DROITS DES ENFANTS RECEVANT DES SOINS

## Droit d'exprimer son point de vue à l'égard des décisions

7 (1) Il est entendu que les droits d'un enfant recevant des soins qui sont énoncés à l'article 3 s'appliquent aux décisions qui concernent l'enfant, notamment les décisions relatives à ce qui suit :

- a) le traitement, l'éducation ou les programmes de formation ou de travail fournis à l'intention de l'enfant ou de l'adolescent;
- b) les croyances, l'identité communautaire et l'identité culturelle de l'enfant ou de l'adolescent;
- c) le placement en établissement ou le congé de l'adolescent où l'enfant ou l'adolescent est placé ou son transfert à un autre établissement.

## Opinion dûment prise en considération

(2) L'opinion de l'enfant ou de l'adolescent à propos des décisions visées au paragraphe (1) doit être dûment prise en considération eu égard à son âge et à son degré de maturité, conformément à la disposition 2 de l'article 3.

## Droit d'être informé

8 A son admission dans un établissement, l'enfant qui reçoit des soins a le droit d'être informé, dans un langage adapté à son niveau de compréhension et dans la mesure de ce qui peut se faire raisonnablement, compte tenu de son niveau de compréhension, des points suivants :

## Droit d'être informé : admission dans un établissement

8 A son admission dans un établissement, et à des intervalles réguliers par la suite, ou, si des intervalles sont prescrits, aux intervalles prescrits par la suite, l'enfant qui reçoit des soins a le droit d'être informé, dans un langage qu'il peut comprendre, des points suivants :

- a) les droits que lui confère la présente partie;
- b) le protocole de règlement des plaintes, les protocoles de règlement des plaintes mis au point en vertu du paragraphe 17 (1) et la possibilité de demander un examen supplémentaire conformément à l'article 18;
- c) les protocoles d'examen ou de révision dont peuvent se prévaloir les enfants de 12 ans ou plus en vertu des articles 63, 64 et 65;
- d) les protocoles de révision dont peut se prévaloir l'adolescent visé à l'alinéa b) de la définition de «enfant recevant des soins» ou «enfant qui reçoit des soins» au paragraphe 2 (1) en vertu de l'article 149;
- e) ses responsabilités pendant son placement;
- f) les règles concernant le fonctionnement quotidien du programme de soins en établissement, y compris les mesures disciplinaires.

## Droits en matière de communications

9 (1) L'enfant qui reçoit des soins a les droits suivants :

- a) le droit d'avoir des conversations privées avec les membres de sa famille, de leur rendre visite et de recevoir régulièrement leur visite, sous réserve du paragraphe (2);
- a) le droit d'avoir régulièrement des conversations privées avec les membres de sa famille ou de sa famille élargie, de leur rendre régulièrement visite et de recevoir leur visite (2);
- b) le droit d'avoir des conversations privées avec les personnes suivantes et de recevoir leur visite :
- b) le droit, sans délai déraisonnable, d'avoir des conversations privées avec les personnes suivantes et de recevoir leur visite :

- (i) son avocat;
- (ii) une autre personne le représentant, y compris l'intervenant provincial en faveur des enfants et des jeunes et les membres de son personnel;
- (iii) l'ombudsman nommé en vertu de la Loi sur l'ombudsman et les membres de son personnel;
- (iv) un député à l'Assemblée législative de l'Ontario ou au Parlement du Canada;

2. La personne qui a une relation bénéfique et importante avec l'enfant ou l'adolescent ou avec un parent, un frère, une sœur ou un membre de la parenté de l'enfant ou de l'adolescent.

**Interprétation : bandes et communautés inuites, métisses ou de Premières Nations**

(4) La mention, dans la présente loi, de bandes ou de communautés inuites, métisses ou de Premières Nations auxquelles un enfant ou un adolescent appartient inclut l'ensemble de ce qui suit :

1. Toute bande dont l'enfant ou l'adolescent est membre.
2. Toute bande avec laquelle l'enfant ou l'adolescent s'identifie.
3. Toute communauté inuite, métisse ou de Premières Nations dont l'enfant ou l'adolescent est membre.
4. Toute communauté inuite, métisse ou de Premières Nations avec laquelle l'enfant ou l'adolescent s'identifie.

**PARTIE II  
DROITS DES ENFANTS ET DES ADOLESCENTS**

**DROITS DES ENFANTS ET DES ADOLESCENTS RECEVANT DES SERVICES**

**Droits des enfants et des adolescents recevant des services**

3 Chaque enfant et chaque adolescent qui reçoit des services sous le régime de la présente loi a les droits suivants :

1. Le droit d'exprimer son opinion librement et sans risque à propos des questions qui le concernent.
2. Le droit d'exprimer, dans le cadre d'un dialogue honnête et respectueux, sur la façon dont sont prises les décisions à son égard et sur ce qui les motive ainsi que le droit d'obtenir que son opinion soit dûment prise en considération eu égard à son âge et à son degré de maturité.
3. Le droit d'être consulté à propos de la nature des services qui lui sont fournis ou qui doivent l'être et le droit d'être informé des décisions prises à l'égard de ces services.
4. Le droit d'exprimer ses préoccupations ou de recommander des changements à l'égard des services qui lui sont fournis ou qui doivent l'être, et ce sans aucune ingérence et sans crainte de faire l'objet de contrainte, de discrimination ou de représailles.
3. Le droit d'être consulté à propos de la nature des services qui lui sont fournis ou qui doivent l'être, le droit de prendre part aux décisions au sujet de ces services et le droit d'être informé des décisions prises à l'égard de ces services.
4. Le droit d'exprimer ses préoccupations ou de recommander des changements à l'égard des services qui lui sont fournis ou qui doivent l'être, et ce sans aucune ingérence et sans crainte de faire l'objet de contrainte, de discrimination ou de représailles.
5. Le droit d'être informé, dans un langage adapté à son niveau de compréhension, des droits que lui confère la présente partie.
6. Le droit d'être informé, dans un langage adapté à son niveau de compréhension, de l'existence et du rôle de l'intervenant provincial en faveur des enfants et des jeunes et de la manière de le contacter.

**Châtiments corporels interdits**

4 Aucun fournisseur de services ou parent de famille d'accueil ne doit infliger un châtiment corporel à un enfant ou à un adolescent ni permettre qu'un tel châtiment lui soit infligé dans le cadre de la prestation d'un service à cet enfant ou à cet adolescent.

**Restrictions applicables à la fermeture de locaux à été**

5 (1) Aucun fournisseur de services ou parent de famille d'accueil ne doit détenir un enfant ou un adolescent dans des locaux fermés à clé ni permettre qu'il y soit détenir dans le cadre de la prestation d'un service à cet enfant ou à cet adolescent, sauf dans la mesure autorisée par la partie VI (Justice pour les adolescents) et la partie VII (Mesures extraordinaires).

**Champ d'application du paragraphe (1)**

(2) Le paragraphe (1) n'interdit pas la fermeture à clé habituelle des locaux la nuit par mesure de sécurité.

**Restrictions applicables à la détention**

5 Aucun fournisseur de services ou parent de famille d'accueil ne doit détenir un enfant ou un adolescent dans des locaux fermés à clé ni permettre qu'il y soit détenir dans le cadre de la prestation d'un service à cet enfant ou à cet adolescent, sauf dans la mesure autorisée par la partie VI (Justice pour les adolescents) et la partie VII (Mesures extraordinaires).

**Restrictions applicables à l'utilisation de la contention physique**

5.1 Aucun fournisseur de services ou parent de famille d'accueil ne doit utiliser la contention physique, ni en autoriser l'utilisation, sur un enfant ou un adolescent à qui il fournit des services, sauf dans la mesure autorisée par les règlements.

i) un service prescrit. («service»)

«société» Agence désignée comme société d'aide à l'enfance en vertu du paragraphe 33 (1). («society»)

«soins conformes aux traditions» S'entend des soins fournis à un enfant inuit, métis ou de Premières Nations et de la bande de surveillance d'un tel enfant, par une personne qui n'est pas un parent de l'enfant, conformément à la coutume de la bande ou de la communauté inuite, métisse ou de Premières Nations à laquelle l'enfant appartient. («customary care»)

«soins en établissement» Le vivre, le couvert et les soins connexes, notamment la surveillance, les soins en établissement protégé ou les soins de groupe, fournis à l'enfant à l'existence du foyer de son parent, à l'exclusion du vivre, du couvert ou des soins connexes fournis à l'enfant qui a été confié à la garde légitime et aux soins d'un membre de sa parenté, de sa famille élargie ou de sa communauté. («residential care»)

«soins fournis par une famille d'accueil» Prestation à un enfant, par une personne et dans son foyer, de soins en établissement. Cette personne :

a) reçoit une indemnité au titre des soins fournis à l'enfant, autre qu'une indemnité versée en vertu de la Loi de 1997 sur le programme Ontario au travail ou de la Loi de 1997 sur le Programme ontarien de soutien aux personnes handicapées;

b) n'est ni un parent de l'enfant, ni une personne auprès de laquelle l'enfant a été placé en vue de son adoption sous le régime de la partie VIII (Adoption et délivrance de permis relatifs à l'adoption).

Les termes «famille d'accueil» et «parent de famille d'accueil» ont un sens correspondant. («foster care», «foster home», «foster parent»)

«superviseur de programme» Superviseur de programme nommé en vertu du paragraphe 52 (2). («program supervisor»)

«titulaire de permis» Quiconque détient un permis. («licensee»)

«traitement» S'entend au sens du paragraphe 2 (1) de la Loi de 1996 sur le consentement aux soins de santé. («treatment»)

«tribunal» La Cour de justice de l'Ontario ou la Cour de la famille de la Cour supérieure de justice. («court»)

«Tribunal» Le Tribunal d'appel en matière de permis. («Tribunal»)

### Interprétation : «parent»

(2) Sauf disposition contraire de la présente loi, la mention dans la présente loi d'un parent d'un enfant vaut mention, selon le cas :

a) de la personne qui a la garde légitime de l'enfant;

b) si plus d'une personne a la garde légitime de l'enfant, de toutes les personnes qui en ont la garde légitime, à l'exclusion de celle qui n'est pas disponible ou qui est incapable d'agir, selon le contexte.

### Membres de la communauté de l'enfant

(3) Pour l'application de la présente loi, les personnes suivantes sont membres de la communauté à laquelle un enfant appartient :

1. La personne qui a des liens ethniques, culturels ou confessionnels en commun avec l'enfant ou avec un parent, un frère, une sœur ou un membre de la parenté de l'enfant.

2. La personne qui a une relation bénéfique et importante avec l'enfant ou avec un parent, un frère, une sœur ou un membre de la parenté de l'enfant.

Interprétation : bandes et communautés inuites, métisses ou de Premières Nations

(1) La mention, dans la présente loi, de bandes ou de communautés inuites, métisses ou de Premières Nations auxquelles un enfant appartient inclut l'ensemble de ce qui suit :

1. Toute bande dont l'enfant est membre;

2. Toute bande avec laquelle l'enfant s'identifie;

3. Toute communauté inuite, métisse ou de Premières Nations dont l'enfant est membre;

4. Toute communauté inuite, métisse ou de Premières Nations avec laquelle l'enfant s'identifie.

### Membres de la communauté de l'enfant ou de l'adolescent

(3) Pour l'application de la présente loi, les personnes suivantes sont membres de la communauté à laquelle un enfant ou un adolescent appartient :

1. La personne qui a des liens ethniques, culturels ou confessionnels en commun avec l'enfant ou l'adolescent ou avec un parent, un frère, une sœur ou un membre de la parenté de l'enfant ou de l'adolescent.



b) d'une bande avec laquelle l'enfant s'identifie;

c) d'une communauté Inuite, métisse ou de Premières Nations dont l'enfant est membre;

d) d'une communauté Inuite, métisse ou de Premières Nations avec laquelle l'enfant s'identifie. («extended family»)

«fournisseur de services» L'un ou l'autre des particuliers ou organismes suivants, à l'exclusion d'un parent de famille d'accueil :

a) le ministre;

b) un titulaire de permis;

c) une personne ou entité, y compris une société, qui fournit un service financé en application de la présente loi;

d) une personne ou entité prescrite. («service provider»)

«lieu de détention provisoire» Lieu ou établissement désigné comme tel sous le régime de la Loi sur le système de justice pénale pour les adolescents (Canada). («place of temporary detention»)

«lieu de détention provisoire en milieu fermé» Lieu de détention provisoire où le ministre a mis sur pied un programme de détention en milieu fermé. («place of secure temporary detention»)

«lieu de détention provisoire en milieu ouvert» Lieu de détention provisoire où le ministre a mis sur pied un programme de détention en milieu ouvert. («place of open temporary detention»)

«lieu de garde en milieu fermé» Lieu ou établissement désigné pour le placement ou l'internement sécuritaires des adolescents en vertu du paragraphe 24.1 (1) de la Loi sur les jeunes contrevenants (Canada), que ce soit conformément à l'article 88 de la Loi sur le système de justice pénale pour les adolescents (Canada) ou autrement. («place of secure custody»)

«lieu de garde en milieu ouvert» Lieu ou établissement désigné comme tel en vertu du paragraphe 24.1 (1) de la Loi sur les jeunes contrevenants (Canada), que ce soit conformément à l'article 88 de la Loi sur le système de justice pénale pour les adolescents (Canada) ou autrement. («place of open custody»)

«membre de la parenté» Relativement à un enfant, s'entend d'une personne qui est son grand-père, sa grand-mère, son grand-oncle, sa grand-tante, son oncle ou sa tante, notamment par une union conjugale ou l'adoption. («relative»)

«ministère» Le ministère du ministre. («Ministry»)

«ministre» Le ministre des Services à l'enfance et à la jeunesse ou l'autre membre du Conseil exécutif qui est chargé de l'application de la présente loi en vertu de la Loi sur le Conseil exécutif. («Minister»)

«permis» Permis délivré sous le régime de la partie VIII (Adoption et délivrance de permis relatifs à l'adoption) ou de la partie IX (Permis d'établissement). La mention d'un permis dans la partie VIII vaut mention d'un permis délivré sous le régime de cette partie et la mention d'un permis dans la partie IX vaut mention d'un permis délivré sous le régime de cette partie. («licence»)

«placement en établissement» Fait de placer un enfant dans un lieu où sont fournis des soins en établissement. Le terme «placé dans un établissement» a un sens correspondant. («residential placement»)

«prescrit» Prescrit par les règlements. («prescribed»)

«règlements» Les règlements pris en vertu de la présente loi. («regulations»)

«renseignements personnels» S'entend au sens de la Loi sur l'accès à l'information et la protection de la vie privée. («personal information»)

«service» S'entend de l'un ou l'autre des services suivants :

a) un service fourni soit à un enfant ayant une déficience intellectuelle ou physique, soit à la famille d'un tel enfant;

b) un service de santé mentale fourni soit à un enfant, soit à sa famille;

c) un service lié à des soins en établissement et fourni à un enfant;

d) un service fourni soit à un enfant qui a ou peut avoir besoin de protection, soit à la famille d'un tel enfant;

e) un service lié à l'adoption et fourni à un enfant, à sa famille ou à d'autres personnes;

f) un service de counseling fourni soit à un enfant, soit à sa famille;

g) un service fourni à un enfant ou à sa famille qui revêt la forme d'un service de soutien ou de prévention et qui est offert en milieu communautaire;

h) un service ou un programme fourni à l'intention d'un adolescent ou pour son compte pour l'application de la Loi sur le système de justice pénale pour les adolescents (Canada) ou de la Loi sur les infractions provinciales;

- a) de toute personne qui, étant âgée d'au moins 12 ans, n'a pas atteint l'âge de 18 ans ou qui, en l'absence de preuve contraire, paraît avoir un âge compris entre ces limites et qui est accusée ou déclarée coupable d'une infraction à la Loi sur le système de justice pénale pour les adolescents (Canada) ou à la Loi sur les infractions provinciales;
- b) pour les besoins du contexte, de toute personne qui, sous le régime de la Loi sur le système de justice pénale pour les adolescents (Canada), est soit accusée d'avoir commis une infraction durant son adolescence, soit déclarée coupable d'une infraction à cette loi. («young person»)
- «agence» Personne morale. («agency»)
- «ancienne loi» La Loi sur les services à l'enfance et à la famille. («old Act»)
- «arrêté, ordre et ordonnance» S'entendent en outre du refus de prendre un arrêté, de donner un ordre ou de rendre une ordonnance. («order»)
- «bande» S'entend au sens de la Loi sur les Indiens (Canada). («band»)
- «Commission» La Commission de révision des services à l'enfance et à la famille prorogée en application de l'article 311. («Board»)
- «communauté inuite, métisse ou de Premières Nations» Communauté que le ministre a énumérée dans un règlement pris en vertu de l'article 67. («First Nations, Inuit or Métis community»)
- «contention physique» Technique d'immobilisation servant à restreindre la capacité d'une personne de bouger librement. Il est toutefois entendu que ce terme ne s'entend pas de ce qui suit :
- a) la restriction des mouvements, la réorientation physique ou l'incitation physique, si ces gestes sont brefs et faits en douceur et qu'ils s'inscrivent dans un programme d'apprentissage des comportements;
- b) l'utilisation de casques, de mitaines protectrices ou de tout autre matériel afin d'empêcher une personne de s'infliger un préjudice corporel ou de s'en infliger davantage. («physical restraint»)
- «contenions mécaniques» Appareil, matériel ou équipement qui réduit la capacité d'une personne à bouger librement. S'entend notamment de menottes, jetables ou non, d'entraves, de ceintures de force, de chaînes à la taille et de chaînes d'accompagnement. («mechanical restraints»)
- «croyance» S'entend en outre de la religion. («creed»)
- «directeur» Directeur nommé en vertu du paragraphe 52 (1). («Director»)
- «directeur local» Directeur local nommé en vertu de l'article 37. («local director»)
- «directeur provincial» S'entend :
- a) soit de la personne, du groupe ou de la catégorie de personnes, ou de l'organisme que le lieutenant-gouverneur en conseil ou son délégué nomme ou désigne pour exercer les attributions que la Loi sur le système de justice pénale pour les adolescents (Canada) confère au directeur provincial;
- b) soit de la personne nommée en vertu de l'alinéa 143 (1) a). («provincial director»)
- «dossier» Dossier de renseignements se présentant sous quelque forme ou sur quelque support que ce soit, notamment sous forme écrite, imprimée, photographique ou électronique. Sont toutefois exclus de la présente définition les programmes informatiques et autres mécanismes qui permettent de produire un dossier. («record»)
- «enfant» Personne de moins de 18 ans. («child»)
- «enfant recevant des soins» ou «enfant qui reçoit des soins» Enfant ou adolescent à qui un fournisseur de services fournit des soins en établissement. S'entend en outre de :
- a) l'enfant confié aux soins d'un parent de famille d'accueil;
- b) l'adolescent qui est, selon le cas :
- (i) détenu dans un lieu de détention provisoire en application de la Loi sur le système de justice pénale pour les adolescents (Canada);
- (ii) placé dans un lieu de garde en milieu fermé ou en milieu ouvert désigné à l'article 88 de la Loi sur le système de justice pénale pour les adolescents (Canada) ou autrement;
- (iii) gardé dans un lieu de garde en vertu de l'article 147 de la présente loi. («child in care»)
- «famille élargie» Personnes à qui un enfant est lié, notamment par une union conjugale ou l'adoption. Dans le cas d'un enfant inuit, métis ou de Premières Nations, s'entend en outre de tout membre :
- a) d'une bande dont l'enfant est membre;

Pour ces motifs, le gouvernement de l'Ontario s'engage, dans un esprit de réconciliation, à collaborer avec les Premières Nations, les Inuits et les Métis pour veiller à ce que, dans la mesure du possible, ils puissent s'occuper de leurs enfants conformément à leur culture, leurs traditions et leur patrimoine particuliers.

## PARTIE I OBJETS ET INTERPRÉTATION OBJETS

### Objet primordial et autres objets

#### Objet primordial

1 (1) L'objet primordial de la présente loi est de promouvoir l'intérêt véritable de l'enfant, sa protection et son bien-être.

#### Autres objets

(2) Dans la mesure où ils sont compatibles avec l'intérêt véritable de l'enfant, sa protection et son bien-être, les objets supplémentaires de la présente loi consistent à reconnaître ce qui suit :

1. Même si les parents peuvent avoir besoin d'aide pour s'occuper de leurs enfants, cette aide devrait favoriser l'autonomie et l'intégrité de la cellule familiale et, dans la mesure du possible, être fournie par consentement mutuel.
2. Le plan d'action le moins perturbateur qui est disponible et qui convient dans un cas particulier pour aider un enfant, y compris la prestation de services de prévention, de services d'intervention précoce et de services de soutien communautaire, devrait être envisagé.

3. Les services fournis aux enfants et aux adolescents devraient l'être d'une manière qui, à la fois :

- i. respecte les besoins de l'enfant ou de l'adolescent en matière de continuité de soins et de relations stables au sein d'une famille et d'un environnement culturel,
- ii. tient compte des besoins des enfants et des adolescents sur les plans physique, affectif, spirituel et mental et sur le plan du développement ainsi que des différences qui existent entre eux,
- iii. tient compte de la race de l'enfant ou de l'adolescent, de son ascendance, de son lieu d'origine, de sa couleur, de son origine ethnique, de sa citoyenneté, de la diversité de sa famille, de son handicap, de sa croyance, de son sexe, de son orientation sexuelle, de son identité sexuelle et de l'expression de son identité sexuelle,
- iv. tient compte des besoins de l'enfant ou de l'adolescent sur les plans culturel et linguistique,
- v. prévoit une évaluation, une planification et une prise de décision précoces, en vue d'arriver à l'élaboration de plans permanents pour les enfants et les adolescents conformes à leur intérêt véritable,
- vi. inclut la participation de l'enfant ou de l'adolescent, de ses parents, des membres de sa parenté et de sa famille élargie, et de la communauté à laquelle il appartient, si cela est approprié.

~~4. Dans la mesure du possible, les services fournis aux enfants, aux adolescents et à leur famille devraient l'être d'une manière qui respecte les différences régionales;~~

~~5. Dans la mesure du possible, les services fournis aux enfants, aux adolescents et à leur famille devraient l'être d'une manière qui tire parti des forces de la famille;~~

~~4. Les services fournis aux enfants, aux adolescents et à leur famille devraient l'être d'une manière qui respecte les différences régionales, dans la mesure du possible.~~

~~5. Les services fournis aux enfants, aux adolescents et à leur famille devraient l'être d'une manière qui tire parti des forces de la famille, dans la mesure du possible.~~

6. Les Premières Nations, les Inuits et les Métis devraient avoir le droit de fournir, dans la mesure du possible, leurs propres services à l'enfance et à la famille et tous les services fournis aux enfants et aux familles inuits, métis et de Premières Nations aux enfants et à leur famille devraient l'être d'une manière qui tient compte de leur culture, de leur patrimoine, de leurs traditions, des liens qui les unissent à leurs communautés et du concept de la famille élargie.

7. La communication appropriée de renseignements, notamment de renseignements personnels, en vue d'assurer la planification et la prestation de services est essentielle à l'obtention de résultats positifs pour les enfants et les familles.

## INTERPRÉTATION

### Interprétation

#### Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

«adolescent» S'entend :



## Préambule

Le gouvernement de l'Ontario reconnaît que les enfants sont des personnes dont les droits doivent être respectés et la voix entendue.

Le gouvernement de l'Ontario est déterminé à respecter les principes suivants :

Les services fournis aux enfants et aux familles doivent être axés sur les enfants.

Les enfants et les familles obtiennent de meilleurs résultats lorsque les services de soutien communautaire misent sur les forces des familles et s'avèrent des outils inestimables pour ce qui est de réduire le recours à des services et à des mesures d'intervention plus perturbateurs.

Les services fournis aux enfants et aux familles doivent respecter leur diversité et le principe d'inclusion, conformément au *Code des droits de la personne* et à la *Charte canadienne des droits et libertés*.

Il faut continuer de lutter contre le racisme systémique et d'éliminer les obstacles qu'il crée pour les enfants et les familles bénéficiant de services. Tous les enfants doivent avoir la possibilité de réaliser leur plein potentiel. La sensibilisation aux préjugés et au racisme systémiques et la nécessité d'éliminer ces obstacles doivent orienter les modes de prestation de l'ensemble des services aux enfants et aux familles.

Les services aux enfants et aux familles doivent, dans la mesure du possible, les aider à entretenir des liens avec la collectivité.

Se fondant sur ces principes, le gouvernement de l'Ontario reconnaît que la *Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille* a pour objectif d'être compatible avec les principes énoncés dans la Convention des Nations Unies relative aux droits de l'enfant et de s'en inspirer.

En ce qui concerne les enfants inuits, métis et de Premières Nations, le gouvernement de l'Ontario reconnaît ce qui suit :

Métis.

La province de l'Ontario entretient des relations uniques et dynamiques avec les Premières Nations, les Inuits et les Premières Nations, les Inuits et les Métis sont reconnus dans la Constitution du Canada. Ils ont leurs propres lois et entretiennent des liens culturels, politiques et historiques particuliers avec la province de l'Ontario.

Lorsqu'un enfant inuit, métis ou de Premières Nations a normalement droit à un service sous le régime de la présente loi, les conflits de compétence ne doivent pas nuire à la prestation de ce service en temps opportun, conformément au principe de Jordan.

La Déclaration des Nations Unies sur les droits des peuples autochtones reconnaît l'importance du droit d'appartenir à une communauté ou à une nation, conformément aux traditions et coutumes de la communauté ou de la nation considérée.

De plus, le gouvernement de l'Ontario croit ce qui suit :

Les enfants inuits, métis et de Premières Nations devraient être heureux, en santé et résilients. Ils devraient être enracinés dans leur culture et leur langue, et s'épanouir en tant que personnes et en tant que membres de leurs familles, de leurs communautés et de leurs nations.

Il est essentiel de respecter les liens qui unissent les enfants inuits, métis et de Premières Nations à leurs communautés politiques et culturelles particulières afin, d'une part, de les aider à s'épanouir et, d'autre part, de favoriser leur bien-être.

284.	Collecte indirecte de renseignements personnels
285.	Collecte directe sans consentement
286.	Avis au particulier : utilisation ou divulgation de renseignements
287.	Utilisation permise
288.	Divulgence sans consentement
289.	Divulgence : planification et gestion de services
290.	Dossiers relatifs aux troubles mentaux
291.	Éléments du consentement : collecte, utilisation et divulgation de renseignements personnels
292.	Retrait du consentement
293.	Consentement conditionnel
294.	Présomption de validité du consentement
295.	Présomption de capacité
295.1	Capacité variable
296.	Mandatatoire spécial
296.1	Facteurs à considérer pour donner son consentement
297.	Pouvoir supplémentaire du mandataire spécial
298.	Constataion d'incapacité
298.1	Nomination d'un représentant
299.	Mesures pour veiller à l'exactitude des renseignements personnels
300.	Mesures pour veiller à ce que la collecte de renseignements personnels soit autorisée
301.	Mesures pour veiller à la sécurité des renseignements personnels
302.	Traitement des dossiers
302.1	Divulgence au successeur
302.2	Déclaration publique écrite par le fournisseur de services
303.	ACCÈS DU PARTICULIER AUX RENSEIGNEMENTS PERSONNELS
303.	Droit d'accès du particulier
304.	Demande d'accès
305.	Réponse du fournisseur de services
306.	Rectification d'un dossier
	RECTIFICATIONS À APPORTER AUX DOSSIERS
	PLAINTES, EXAMENS ET INSPECTIONS
307.	Dépôt d'une plainte auprès du commissaire
307.1	Réponse du commissaire
307.2	Examen à l'initiative du commissaire
307.3	Procédure relative à l'examen du commissaire
307.4	Pouvoirs d'inspection
307.5	Pouvoirs du commissaire
307.6	Appel d'une ordonnance
307.7	Exécution de l'ordonnance
307.8	Nouvelle ordonnance du commissaire
307.9	Domages-intérêts pour violation de la vie privée
307.10	Pouvoirs généraux du commissaire
307.11	Délégation par le commissaire
307.12	Restrictions : renseignements personnels
307.13	Immunité
308.	Représailles interdites
309.	Immunité
310.	Infractions
	PARTIE XI
	DISPOSITIONS DIVERSES
311.	Commission de révision des services à l'enfance et à la famille
312.	Vérifications de dossiers de police
313.	Demande de vérifications de dossiers de police
314.	Examen de la Loi
314.1	Examen abordant les droits des enfants et des adolescents
315.	Examen abordant les questions touchant les Premières Nations, les Inuits et les Métis
	PARTIE XII
	RÈGLEMENTS

240.	Définitions
241.	Permis exigé
242.	Interdiction : infraction antérieure
243.	Interdiction : laisser entendre qu'une personne est agréée
244.	Placements conformes à la Loi et aux règlements
245.	Obligation de conserver un permis
246.	Obligation de fournir un permis et d'autres renseignements
247.	Signalement de certains faits au directeur
248.	Exemption par un directeur
249.	Directives du ministre
250.	Publication de renseignements par le ministre
251.	Délivrance et renouvellement de permis
252.	Conditions du permis
253.	Durée du permis
254.	Validité du permis en attendant son renouvellement
255.	Catégorie de permis
256.	Nombre maximal d'enfants
257.	Appel de la catégorie ou du nombre maximal
258.	Refus et révocations
259.	Intention de révoquer le permis ou de refuser de le renouveler
260.	Avis d'intention
261.	Suspension
262.	Audiences devant le Tribunal
263.	Règles applicables aux instances
264.	Appels
264.	Appel de la décision du Tribunal
265.	Droits
265.	DROITS EXIGÉS PAR LE TITULAIRE DE PERMIS
266.	Cessation des activités
266.	Remise du permis et des dossiers
267.	Avis à l'agence de placement ou à une autre personne : retrait d'enfants
268.	Ordre d'occupation
269.	Injonction
270.	INSPECTIONS : DÉLIVRANCE DE PERMIS D'ÉTABLISSEMENT
271.	Nomination d'inspecteurs
271.	Objet de l'inspection
272.	Inspections sans mandat
273.	Pouvoirs de l'inspecteur
274.	Mandat
275.	Rapport d'inspection
276.	Admissibilité de certains documents
277.	Infractions
277.	INFRACTIONS
278.	Définitions
278.1	Prépondérance des dispositions relatives à la confidentialité
279.	Pouvoirs du ministre en matière de collecte, d'utilisation et de divulgation de renseignements personnels
280.	Collecte, utilisation et divulgation de renseignements personnels par le ministre
280.	Renseignements demandés par le ministre
281.	COLLECTE, UTILISATION ET DIVULGATION DE RENSEIGNEMENTS PERSONNELS PAR LES FOURNISSEURS DE SERVICES
281.	Champ d'application de la présente partie
282.	Collecte, utilisation et divulgation de renseignements personnels : consentement exigé
283.	Collecte, utilisation et divulgation de renseignements personnels autres que des renseignements personnels
278.	DÉFINITIONS
278.	Définitions
278.1	Prépondérance des dispositions relatives à la confidentialité
279.	Pouvoirs du ministre en matière de collecte, d'utilisation et de divulgation de renseignements personnels
280.	Collecte, utilisation et divulgation de renseignements personnels par le ministre
280.	Renseignements demandés par le ministre
281.	COLLECTE, UTILISATION ET DIVULGATION DE RENSEIGNEMENTS PERSONNELS PAR LES FOURNISSEURS DE SERVICES
281.	Champ d'application de la présente partie
282.	Collecte, utilisation et divulgation de renseignements personnels : consentement exigé
283.	Collecte, utilisation et divulgation de renseignements personnels autres que des renseignements personnels

## PARTIE X RENSEIGNEMENTS PERSONNELS



198.	Cas où l'ordonnance ne doit pas être rendue
199.	Déclaration du directeur
200.	Lieu de l'audience
201.	Règles : requêtes
202.	Pouvoir du tribunal
203.	Changement de nom
204.	Modification ou révocation d'une ordonnance de communication après l'adoption
205.	Appel de l'ordonnance visant à modifier ou à révoquer l'ordonnance de communication
206.	Application de l'article 201
207.	Participation possible de l'enfant
208.	Représentation par un avocat
209.	ACCORDS DE COMMUNICATION Parties à l'accord de communication
210.	ORDONNANCES PROVISOIRES Ordonnance provisoire
211.	Ordonnances d'adoption successives
212.	Appels EFFET DE L'ORDONNANCE D'ADOPTION
213.	Ordonnance définitive
214.	Statut de l'enfant adopté
215.	Adoption faite dans une autre autorité législative
216.	Parent de naissance
217.	Maintien des relations DOSSIERS - CONFIDENTIALITÉ ET DIVULGATION
218.	Parent informé
219.	Documents du tribunal
220.	Désignation de dépositaires de renseignements
221.	Divulgation au dépositaire désigné
222.	Divulgation à d'autres personnes
223.	Portée
224.	CARACTÈRE CONFIDENTIEL DES DOSSIERS D'ADOPTION Caractère confidentiel des renseignements sur les adoptions
225.	Injonction PERMIS – EXIGENCES, DÉLIVRANCE ET RENOUELEMENT
226.	Permis Conditions du permis
227.	PERMIS – REFUS ET RÉVOCATION
228.	Motifs de refus
229.	Motifs de révocation ou de refus de renouvellement d'un permis
230.	Audiences : articles 228 ou 229
231.	Révision des conditions du permis
232.	Permis valide en attendant le renouvellement
233.	Suspension du permis
234.	Application d'autres dispositions
235.	Permis et dossiers remis PERMIS – REMISE DU PERMIS ET DES DOSSIERS
236.	Injonction PERMIS – INJONCTIONS
237.	Adoption d'un enfant : paiements interdits
238.	Infractions
239.	Infractions : délivrance de permis

## PARTIE IX PERMIS D'ÉTABLISSEMENT

157.	Utilisation de contentions mécaniques
158.	Demande de placement d'un enfant
159.	Témoignages oraux
160.	Évaluation
161.	Placement dans un programme de traitement en milieu fermé : critères
162.	Durée du placement
163.	Motifs, programme de soins
164.	Prorogation
	CONGÉ ACCORDÉ PAR L'ADMINISTRATEUR
165.	Congé
	RÉVISION DU PLACEMENT
166.	Révision du placement
167.	Application des paragraphes 164 (3) à (6) et des articles 165 et 166
	ADMISSION D'URGENCE
168.	Admission d'urgence
	AIDE DE LA POLICE
169.	Pouvoirs des agents de la paix, durée du placement
	DÉSÉSICALADE SOUS CLÉ
170.	Agrement du directeur
171.	Désescalade interdite
172.	Examen de la nécessité d'une pièce de désescalade sous clé
	PSYCHOTROPES
173.	Utilisation de psychotropes : consentement exigé
	COMMISSION PROFESSIONNELLE CONSULTATIVE
174.	Constitution de la Commission
175.	Demande d'examen
	<b>PARTIE VIII</b>
	<b>ADOPTION ET DELIVRANCE DE PERMIS RELATIFS À L'ADOPTION</b>
	INTERPRÉTATION
176.	Interprétation
	CONSENTEMENT À L'ADOPTION
177.	Consentements
178.	Permission de passer outre à l'obtention du consentement
179.	Retrait tardif du consentement
	PLACEMENT EN VUE D'UNE ADOPTION
180.	Placement d'enfants : pouvoir exclusif des sociétés et des titulaires de permis
181.	Restrictions applicables aux placements par une société
182.	Planification d'une adoption
183.	Enfant inuit, métis ou de Premières Nations
184.	Enfant inuit, métis ou de Premières Nations : ordonnance de communication et autres
185.	Enfant résidant au Canada : placement projeté
186.	Enfant résidant hors du Canada : étude du milieu familial
187.	Enfant résidant hors du Canada : examen du placement projeté
188.	Révocation de l'ordonnance de visite
	DÉCISION DE REFUSER DE PLACER L'ENFANT OU DE RETIRER L'ENFANT DÉJÀ PLACÉ
189.	Décision de la société ou du titulaire de permis
190.	Avis au directeur
	ORDONNANCES DE COMMUNICATION
191.	Aucune ordonnance de visite en vigueur
192.	Ordonnance de visite en vigueur
193.	Ordonnance de visite en vigueur
194.	Ordonnance de communication : bande et communauté inuite, métisse ou de Premières Nations
195.	Requête en modification ou en révocation de l'ordonnance de communication avant l'adoption
	ORDONNANCES D'ADOPTION
196.	Ordonnances d'adoption
197.	Requérant mineur

121.	Soins et soutien continus
122.	Obligation de déclarer le besoin de protection
123.	Rapport relatif à un enfant ayant besoin de protection : évaluation et vérification par la société
124.	Rapport obligatoire par la société : cas où un enfant confié à ses soins et à sa garde subit des mauvais traitements
125.	Obligation de signaler le décès d'un enfant
126.	Groupe d'étude
127.	Accès aux dossiers par ordonnance
128.	Production de dossiers
129.	Mandat autorisant l'accès au dossier
130.	Télémandat
131.	Registre
132.	Registre des mauvais traitements infligés aux enfants
133.	Audience : personne inscrite
134.	Pouvoir de transférer l'enfant
135.	Infractions, ordonnances de ne pas faire, recouvrement au nom de l'enfant et injonctions
136.	Mauvais traitements : omission de prendre des mesures convenables
137.	Ordonnance de ne pas faire
138.	Réclamation juridique : recouvrement en raison de mauvais traitements
139.	Interdiction
140.	Infractions : ingérence dans la vie d'un enfant confié aux soins ou à la surveillance d'une société
141.	Autres infractions
142.	Injonction
143.	Programmes
144.	Nominations par le ministre
145.	Rapports et renseignements
146.	Détention provisoire en milieu ouvert ou en milieu fermé
147.	Détention sous le régime de la Loi sur les infractions provinciales
148.	Adolescents en milieu ouvert
149.	Commission de révision des placements sous garde
150.	Recquête présentée à la Commission
151.	Appréhension
152.	Inspections et enquêtes
153.	Inspections et enquêtes
154.	Perquisitions ou fouilles permises
155.	Contenants mécaniques
156.	Contenants mécaniques
157.	Définitions
158.	Programmes de traitement en milieu fermé
159.	Programmes de traitement en milieu fermé
160.	Programmes de traitement en milieu fermé
161.	Programmes de traitement en milieu fermé
162.	Programmes de traitement en milieu fermé
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199.	Programmes de traitement en milieu fermé
200.	Programmes de traitement en milieu fermé



78.	Parties
79.	Soins conformes aux traditions
80.	INTRODUCTION D'UNE INSTANCE PORTANT SUR LA PROTECTION D'UN ENFANT
80.1	Mandats, ordonnances, etc.
80.1	Exception : enfants de 16 et 17 ans amenés dans un lieu sûr avec consentement
81.	CAS PARTICULIERS D'APPREHENSION D'ENFANTS
81.	Enfant qui s'est soustrait ou a été soustrait à des soins amené dans un lieu sûr
82.	Appréhension d'un enfant de moins de 12 ans chez lui ou dans un lieu sûr
83.	Enfants qui se soustraient aux soins des parents
84.	Pouvoir d'entrer dans des locaux
85.	Procédure : audiences
86.	Séjour limité dans un lieu sûr
86.1	Restriction relative au délai dans un lieu sûr : enfant de 16 ou 17 ans
87.	Audience portant sur la protection de l'enfant
88.	Territoire de compétence
89.	Pouvoir du tribunal
90.	Preuve
91.	Ajournement
92.	Usage des méthodes prescrites de règlement extrajudiciaire des différends
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# ANNEXE I LOI DE 2017 SUR LES SERVICES À L'ENFANCE, À LA JEUNESSE ET À LA FAMILLE

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Loi édictant la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille,  
modifiant et abrogeant la Loi sur les services à l'enfance et à la famille  
et apportant des modifications connexes à d'autres lois

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Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

Contenu de la présente loi

1 La présente loi est constituée du présent article, des articles 2 et 3 et de ses annexes.

Entrée en vigueur

2 (1) Sous réserve des paragraphes (2) et (3), la présente loi entre en vigueur le jour où elle reçoit la sanction royale.

(2) Les annexes de la présente loi entrent en vigueur comme le prévoit chacune d'elles.

(3) Si une annexe de la présente loi prévoit que l'une ou l'autre de ses dispositions entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation, la proclamation peut s'appliquer à une ou à plusieurs d'entre elles. En outre, des proclamations peuvent être prises à des dates différentes en ce qui concerne n'importe lesquelles de ces dispositions.

Titre abrégé

3 Le titre abrégé de la présente loi est *Loi de 2017 sur le soutien à l'enfance, à la jeunesse et à la famille*.

La loi intitulée *Jewish Family and Child Service of Metropolitan Toronto Act, 1980* est modifiée pour prévoir que la société créée en vertu de cette loi est réputée être une société d'aide à l'enfance désignée en vertu de la *Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille* et qu'elle ne peut exercer ses pouvoirs d'apprehension et de détention et son pouvoir d'amener des enfants dans un lieu sûr que dans les limites de la cité de Toronto. Les dispositions en matière de gouvernance de la loi spéciale sont abrogées, ce qui signifie que la société est assujettie aux dispositions en matière de gouvernance de la *Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille*.

La *Loi de 1997 sur les relations de travail liées à la transition dans le secteur public* est modifiée de manière à s'appliquer automatiquement en cas de fusion de deux sociétés d'aide à l'enfance ou plus.

Les seules modifications de cette annexe qui ne découlent pas de l'abrogation de la *Loi sur les services à l'enfance et à la famille* et de l'édiction de la *Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille* sont celles apportées à la *Loi sur l'accès à l'information et la protection de la vie privée*. Les paragraphes 65 (8) et 67 (2) de cette loi sont modifiés pour corriger des renvois à d'autres lois.

définition de «enfant» au paragraphe 37 (1) de la Loi, qui exclut les enfants qui ont réellement ou apparemment 16 ans ou plus pour l'application de la partie III (Protection de l'enfance), est abrogée, ce qui signifie que, pour l'application de la partie III, un enfant s'entend d'une personne de moins de 18 ans. Le paragraphe 37 (2) de la Loi est modifié pour prévoir que les circonstances ou situations supplémentaires dans lesquelles un enfant de 16 ou 17 ans peut avoir besoin de protection peuvent être prescrites par règlement. Les paragraphes 41 (1) et (2) de la Loi, qui permettent actuellement l'appréhension d'enfants qui ont réellement ou apparemment moins de 16 ans, sont modifiés pour également permettre l'appréhension d'enfants de 16 ou 17 ans. Enfin, l'article 40 est modifié et les nouveaux articles 40.1 et 40.2 prévoient qu'une société peut amener dans un lieu sûr, uniquement avec son consentement, un enfant de 16 ou 17 ans qui fait l'objet d'une ordonnance de surveillance et qu'elle doit, le plus tôt possible et, au plus tard, dans les cinq jours après avoir amené l'enfant dans un lieu sûr, saisir un tribunal de l'affaire ou rendre l'enfant à la personne qui a le droit d'en avoir la garde.

Le nouvel article 37.1 autorise un enfant de 16 ou 17 ans à conclure une entente avec une société relativement à la prestation de services et de soutiens si la société établit que l'enfant a ou peut avoir besoin de protection, qu'elle est convaincue qu'aucun autre plan d'action moins perturbateur n'est adéquat et que l'enfant veut conclure l'entente.

L'article 57 de la Loi est modifié pour prévoir qu'un tribunal ne doit rendre aucune ordonnance en vertu de cet article à l'égard d'un enfant qui s'est soustrait à l'autorité parentale avant ou après l'intervention prévue sous le régime de la partie III, si le tribunal n'est pas convaincu qu'une ordonnance soit nécessaire pour protéger l'enfant à l'avenir et ce, même si celui-ci a besoin de protection.

L'article 71.1 de la Loi est modifié afin de permettre qu'une société assume les soins et l'entretien d'une personne de 18 ans ou plus si celle-ci a conclu avec la société une entente en ce sens quand elle avait 16 ou 17 ans et que cette entente a expiré à son 18<sup>e</sup> anniversaire de naissance.

L'obligation qu'ont certains professionnels, prévue à l'article 72, de déclarer leurs soupçons selon lesquels un enfant a besoin de protection est modifiée pour permettre qu'ils puissent déclarer des soupçons de ce genre à l'égard d'enfants de 16 ou 17 ans, sans toutefois qu'il s'agisse d'une exigence.

L'obligation de communication de soupçons selon lesquels un enfant a besoin de protection, qui est prévue à l'article 72, est modifiée pour permettre la communication de soupçons de ce genre à l'égard d'enfants de 16 ou 17 ans, sans toutefois en faire une exigence.

Comme pour les modifications concernant l'âge auquel un enfant peut avoir besoin de protection, toutes les modifications mentionnées précédemment sont apportées en prévision des dispositions de la nouvelle loi. Toutefois, il est prévu que ces modifications apportées à la loi actuelle entrent en vigueur avant la nouvelle loi.

#### ANNEXE 3

### MODIFICATIONS DE LA LOI DE 2017 SUR LES SERVICES À L'ENFANCE, À LA JEUNESSE ET À LA FAMILLE

Cette annexe modifie la nouvelle Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille de la manière décrite ci-dessous.

Les articles 130 et 131 de la Loi, qui prévoient la tenue d'un registre des mauvais traitements infligés aux enfants, sont abrogés. Des modifications corrélatives sont apportées à d'autres articles pour supprimer tous les renvois aux articles 130 et 131.

Le paragraphe 203 (1) de la Loi permet au tribunal de changer le nom de famille et le prénom de l'adopté. Ce paragraphe est révisé pour permettre au tribunal de changer le nom de famille de l'adopté, son prénom, les deux, ou son nom unique. Le tribunal peut aussi changer le nom unique de la personne et lui donner un nom composé d'au moins un prénom et un nom de famille ou changer le prénom et le nom de famille de la personne et lui donner un nom unique. Les noms uniques doivent être établis conformément à la culture traditionnelle de l'adopté ou à celle du ou des requérants.

Les renvois à la Loi sur les personnes morales sont remplacés par des renvois à la Loi de 2010 sur les organisations sans but lucratif, qui n'est pas encore proclamée.

#### ANNEXE 4

### MODIFICATIONS D'AUTRES LOIS

Cette annexe contient des modifications apportées à 36 autres lois, la plupart découlant de l'abrogation de la Loi sur les services à l'enfance et à la famille et de l'édiction de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille. Une grande partie de ces modifications ne visent qu'à mettre à jour les renvois et la terminologie.

Les lois visées ci-après sont modifiées de manière plus substantielle.

La Loi de 1998 sur l'adoption internationale est modifiée afin de la rendre plus conforme aux exigences en matière d'adoption et de délivrance de permis relatifs à l'adoption de la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille. Plus particulièrement, des modifications sont apportées afin d'exiger des vérifications de dossiers de police, de donner au directeur nommé sous le régime de cette loi le pouvoir de révoquer un permis ou de refuser de le délivrer ou de le renouveler pour faciliter des adoptions internationales, de clarifier les pouvoirs d'inspection à l'égard des titulaires de permis et de modifier les dispositions relatives aux peines.



d'enfants à qui le titulaire de permis peut fournir des soins en établissement. Le titulaire de permis doit exiger les droits indiqués dans les règlements ou calculés conformément à ceux-ci au titre de la prestation de soins en établissement, sauf si un règlement le soustrait à l'application de cette exigence.

Les règles concernant le droit de demander une audience devant le Tribunal d'appel en matière de permis et d'interjeter appel des décisions du Tribunal demeurent essentiellement les mêmes.

Les pouvoirs que confère la loi actuelle à un superviseur de programme pour effectuer des inspections concernant la délivrance de permis d'établissement sont remplacés par les pouvoirs conférés à un inspecteur pour effectuer de telles inspections afin d'assurer la conformité à la Loi, aux règlements et aux directives. La partie énonce désormais les règles applicables à de telles inspections avec ou sans mandat.

#### Partie X - Renseignements personnels

Cette partie remplace la partie VIII très limitée de la loi actuelle et est essentiellement nouvelle. Elle s'inspire des dispositions de la *Loi de 2004 sur la protection des renseignements personnels sur la santé*.

La partie énonce des règles détaillées concernant ce qui suit : la collecte, l'utilisation et la divulgation de renseignements personnels par le ministre et par des fournisseurs de services; l'établissement de la capacité d'un particulier à donner, à refuser ou à retirer son consentement à la collecte, à l'utilisation ou à la divulgation des renseignements personnels le concernant; l'autorisation d'un mandataire spécial à donner, à refuser ou à retirer un consentement au nom d'un particulier; la conservation et la protection de renseignements personnels par des fournisseurs de services; le droit d'un particulier d'avoir accès aux dossiers de renseignements personnels le concernant dont un fournisseur de services a la garde et le contrôle et de demander à celui-ci de rectifier ces renseignements; le droit d'un particulier de porter plainte devant le commissaire à l'information et à la protection de la vie privée à l'égard de toute contravention à la partie; les pouvoirs et fonctions du commissaire à l'information et à la protection de la vie privée sous le régime de la présente partie.

#### Partie XI - Dispositions diverses

Cette partie incorpore la partie XII de la loi actuelle avec les modifications indiquées ci-après.

L'une des nouveautés de cette partie réside dans le fait que le lieutenant-gouverneur en conseil peut, par règlement, exiger de certaines personnes, y compris de celles qui fournissent ou reçoivent des services en application de la Loi, qu'elles fournissent une vérification de dossier de police à une autre personne ou à un autre organisme. De plus, une société peut, dans les circonstances prescrites ou à une fin prescrite, demander à un corps de police de procéder à des vérifications de dossiers de police ou de lui fournir d'autres renseignements prescrits par les règlements en vue d'exercer ses fonctions.

Sous le régime de la loi actuelle, le ministre doit procéder périodiquement à l'examen de la Loi ou des dispositions de celle-ci la Loi qu'il précise. Cet examen doit comprendre un examen des dispositions qui imposent des obligations aux sociétés lorsqu'elles fournissent des services à une personne indienne ou autochtone. Sous le régime de la nouvelle loi, l'examen doit comporter un volet consacré à l'autre objet de la Loi concernant les Premières Nations, les Inuits et les Métis afin d'évaluer les progrès accomplis en vue de réaliser cet objet. La partie XI de la nouvelle loi prévoit que l'examen doit aborder les questions suivantes : les droits des enfants et des adolescents; les dispositions imposant des obligations aux sociétés lorsqu'elles fournissent des services à une personne inuite, métisse ou de Premières Nations; l'autre objet de la Loi relatif aux Premières Nations, aux Inuits et aux Métis, afin d'évaluer les progrès accomplis en vue de réaliser cet objet. Enfin, la partie exige aussi que le ministre consulte des enfants et des adolescents lorsqu'il effectue un examen.

#### Partie XII - Règlements

Comme dans la loi actuelle, le pouvoir de prendre des règlements relatifs à chaque partie de la Loi est énoncé dans une partie autonome. De plus, l'article 316 autorise le lieutenant-gouverneur en conseil et le ministre à prendre des règlements pour l'application de la Loi dans son ensemble, y compris des règlements régissant les questions transitoires pouvant découler de l'édiction de la nouvelle loi et de l'abrogation de la loi actuelle.

### ANNEXE 2

## MODIFICATIONS DE LA LOI SUR LES SERVICES À L'ENFANCE ET À LA FAMILLE

Cette annexe modifie l'actuelle *Loi sur les services à l'enfance et à la famille* de la manière précisée ci-dessous.

Les modifications indiquées ci-après visent à anticiper l'extension de l'âge auquel un enfant peut avoir besoin de protection (de 16 ans à 18 ans) dans la nouvelle loi à l'annexe 1. Les alinéas 15 (3) a) et b) de la Loi sont réécrits pour faire en sorte que la fonction des sociétés en matière d'enquête sur les allégations selon lesquelles un enfant peut avoir besoin de protection et de protéger les protection des enfants confiés à leurs soins ne soit plus limitée aux enfants de moins de 16 ans ou faisant déjà l'objet d'une ordonnance de protection. L'article 27 de la Loi est modifié pour préciser qu'un fournisseur de services doit obtenir le consentement d'un enfant de 16 ans ou plus avant de lui fournir un service en établissement. Le paragraphe 27 (3) réécrit prévoit que le consentement d'un enfant de 16 ans ou plus à la prestation d'un service n'est pas exigé si le service est fourni sous le régime de la partie III (Protection de l'enfance). L'alinéa 29 (2) a) de la Loi est abrogé de sorte que des ententes relatives à des soins temporaires puissent être conclues à l'égard d'enfants de 16 ans ou plus, une ordonnance du tribunal ou le consentement d'une personne de 16 ans ou plus avant de lui fournir un service. Le paragraphe 29 (2) de la Loi est réécrit pour permettre la conclusion d'ententes relatives à des soins temporaires à l'égard d'enfants de 16 ans ou plus. La

À l'heure actuelle, les fournisseurs de services sont tenus de se conformer aux normes prescrites par règlement concernant, d'une part, la période pendant laquelle un adolescent âgé de 16 ans ou plus qui se trouve dans un lieu de garde en milieu fermé ou de détention provisoire en milieu fermé peut être détenu dans une pièce d'isolement sous clef et, d'autre part, la surveillance de cet adolescent. Le texte de la nouvelle loi énonce maintenant les normes en matière de durée de détention et de surveillance des adolescents placés dans des pièces de descente sous clef.

#### Partie VIII - Adoption et délivrance de permis relatifs à l'adoption

Cette partie s'appuie sur la partie VII de la loi actuelle.

Dans la loi actuelle, l'intérêt véritable d'un enfant indien ou autochtone est établi en prenant en considération l'importance de maintenir l'identité culturelle de l'enfant. Cette disposition est élargie dans la nouvelle loi afin d'exiger que pour un enfant inuit, métis ou de Premières Nations, l'importance des liens qui unissent l'enfant à la communauté soit également prise en considération.

Les circonstances à prendre en considération pour établir l'intérêt véritable d'un enfant ont changé. Les modifications sont les mêmes que celles énoncées précédemment à la partie V - Protection de l'enfance.

Un nouveau processus en deux étapes est mis en place dans le cas où un titulaire de permis amène en Ontario un enfant qui ne réside pas au Canada pour le placer en vue de son adoption. Dans un premier temps, le titulaire de permis doit obtenir l'approbation du directeur selon laquelle la personne auprès de qui l'enfant doit être placé a la capacité juridique et l'aptitude à adopter, sur la base d'un rapport sur l'étude du milieu familial. Le titulaire de permis doit ensuite obtenir l'approbation du directeur en ce qui concerne le placement projeté.

La loi actuelle prévoit la possibilité de déroger à certaines exigences si l'enfant est placé en vue de son adoption auprès d'un membre de sa parenté, d'un parent ou du conjoint d'un parent. Dans la nouvelle loi, la dérogation ne s'applique que si l'enfant réside au Canada et que le placement a lieu en Ontario. La loi actuelle prévoit également une dérogation aux mêmes exigences si l'enfant est envoyé hors de l'Ontario en vue de son adoption par un membre de sa parenté, un parent ou le conjoint d'un parent. Dans la nouvelle loi, la dérogation ne s'applique que si le placement a lieu au Canada.

Les sociétés qui commencent à planifier l'adoption d'un enfant inuit, métis ou de Premières Nations doivent désormais tenir compte de l'importance, pour l'enfant, de nouer ou de maintenir des liens avec les bandes et communautés inuites, métisses ou de Premières Nations auxquelles il appartient.

Le tribunal continue de pouvoir rendre une ordonnance de communication à l'égard d'un enfant afin de faciliter la communication ou de maintenir une relation entre l'enfant et certaines personnes. Un nouveau type d'ordonnance de communication est prévu dans le cas où une société a l'intention de placer un enfant inuit, métis ou de Premières Nations confié aux soins d'une société de façon prolongée en vue de son adoption. Dans de telles circonstances, l'enfant, la société ou le représentant qu'a choisi chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles l'enfant appartient peut présenter une requête en ordonnance de communication. Le tribunal peut rendre ce type d'ordonnance de communication s'il est convaincu que l'ordonnance est dans l'intérêt véritable de l'enfant et qu'elle aidera l'enfant à nouer ou à maintenir des liens avec la culture, le patrimoine et les traditions de la communauté inuite, métisse ou de Premières Nations à laquelle il appartient et à préserver son identité culturelle et les liens qui l'unissent à la communauté. Si l'enfant a 12 ans ou plus, il doit consentir à l'ordonnance de communication.

Dans les diverses dispositions portant sur les requêtes et les instances relatives aux ordonnances de communication, l'avis à un enfant doit être donné en en remettant une copie à l'avocat des enfants, à l'avocat de l'enfant, s'il y a lieu, et à l'enfant, s'il a 12 ans ou plus. Un enfant a le droit de participer à l'instance comme s'il y était partie. Si un enfant a été placé en vue de son adoption mais que la société a décidé de ne pas compléter les formalités de l'adoption ou que l'enfant est renvoyé aux soins d'une société après qu'une ordonnance d'adoption a été rendue, la société est désormais tenue de faire tous les efforts raisonnables pour aider un enfant à maintenir des relations avec des personnes qui sont bénéfiques et importantes pour lui.

Les règles en matière de délivrance de permis relatifs à l'adoption énoncées dans la partie IX de l'ancienne loi se trouvent désormais dans cette partie et demeurent essentiellement les mêmes.

#### Partie IX - Permis d'établissement

Cette partie remplace la partie IX de la loi actuelle. L'actuelle partie IX traite de la délivrance de permis d'établissement et de permis relatifs à l'adoption. Dans la nouvelle loi, les dispositions ayant trait à la délivrance de permis relatifs à l'adoption ont été transférées à la partie VIII.

Comme dans la loi actuelle, un permis est exigé pour faire fonctionner un foyer pour enfants ou pour fournir des soins en établissement dans des circonstances déterminées. La partie IX de la nouvelle loi prévoit désormais la prise de règlements pour prescrire tout autre foyer comme foyer pour enfants.

Cette partie comprend un certain nombre de nouvelles dispositions. Le ministre peut donner des directives à caractère contraignant aux titulaires de permis. Le ministre peut publier certains renseignements à l'égard des permis et des demandes de permis. Les permis doivent être délivrés ou renouvelés pour une durée déterminée. Le directeur peut attribuer une catégorie à un permis. Lorsqu'il délivre ou renouvelle un permis, le directeur peut indiquer sur le permis le nombre maximal



patrimoine culturel et linguistique de l'enfant. La loi actuelle inclut aussi la croyance religieuse dans laquelle l'enfant est élevé, alors que la nouvelle loi comprend la race de l'enfant, son ascendance, son lieu d'origine, son origine ethnique, sa citoyenneté, la diversité de sa famille, son handicap, sa croyance, son sexe, son orientation sexuelle, son identité sexuelle et l'expression de son identité sexuelle.

Le pouvoir qu'ont les sociétés de conclure des ententes volontaires avec des personnes temporairement incapables de fournir des soins à leurs enfants et avec des adolescents est transféré de la partie II (Accès volontaire aux services) de la loi actuelle à la partie V de la nouvelle loi. Des ententes relatives à des soins temporaires peuvent être conclues à l'égard d'un enfant de tout âge et ne sont plus restreintes aux enfants de moins de 16 ans. Le pouvoir de conclure une entente relative à des besoins particuliers ne figure pas dans la nouvelle loi.

Sous le régime de la loi actuelle, une personne qui a plus de 18 ans peut recevoir d'une société des soins et de l'entretien prolongés si elle faisait l'objet d'une ordonnance de garde ou d'une ordonnance de tutelle par la Couronne qui a expiré à son 18<sup>e</sup> anniversaire de naissance ou à son mariage, si elle était admissible à des services de soutien quand elle avait 16 ou 17 ans, qu'elle ait effectivement reçu ou non de tels services ou, dans le cas d'une personne indienne ou autochtone, si elle recevait des soins conformes aux traditions immédiatement avant son 18<sup>e</sup> anniversaire de naissance. La disposition comparable de la nouvelle loi porte sur les soins et le soutien continus, emploie la terminologie mise à jour (Premières Nations, Inuits, Métis et enfants confiés aux soins d'une société de façon prolongée) et prévoit que la personne qui a conclu une entente avec la société quand elle avait 16 ou 17 ans peut aussi recevoir des soins et du soutien après l'expiration de l'entente. L'article comparable de la nouvelle loi prévoit désormais que la prestation de soins et de soutien continus est obligatoire dans les circonstances énumérées dans la loi actuelle et il ajoute une autre circonstance, à savoir quand la personne a conclu une entente avec la société alors que la personne était âgée de 16 ou 17 ans et que l'entente expiré à son 18<sup>e</sup> anniversaire de naissance. De plus, le nouvel article utilise la terminologie à jour : personne inuite, métisse ou de Premières Nations et enfants confiés aux soins d'une société de façon prolongée.

Une société est tenue de faire tous les efforts raisonnables pour mettre en oeuvre un plan de soins conformes aux traditions pour un enfant inuit, métis ou de Premières Nations si l'enfant a besoin de protection, ne peut rester ou être rendu aux soins de la personne qui en était responsable immédiatement avant l'intervention de la société et qu'il ne peut pas continuer de vivre avec la personne qui en était responsable immédiatement avant l'intervention de la société ou la personne qui a le droit d'en avoir la garde, ou ne peut être rendu à l'une de ces deux personnes, et qu'il est membre d'une bande ou d'une communauté inuite, métisse ou de Premières Nations ou s'identifie à une bande ou communauté. Les soins conformes aux traditions s'entendent des soins fournis à un enfant inuit, métis ou de Premières Nations et de la surveillance d'un tel enfant, par une personne qui n'est pas un parent de l'enfant, conformément à la coutume de la bande ou de la communauté inuite, métisse ou de Premières Nations à laquelle l'enfant appartient.

La nouvelle loi ne comporte pas de disposition équivalente à l'article 86 de la loi actuelle, lequel interdit qu'un enfant catholique soit confié aux soins d'une société ou d'un établissement protestant ou d'une famille protestante et qu'un enfant protestant soit confié aux soins d'une société ou d'un établissement catholiques ou d'une famille catholique. La société est désormais tenue de choisir un placement en établissement qui, dans la mesure du possible, respecte la race de l'enfant, son ascendance, son lieu d'origine, sa couleur, son origine ethnique, sa citoyenneté, la diversité de sa famille, sa croyance, son sexe, son orientation sexuelle, son identité sexuelle, l'expression de son identité sexuelle et son patrimoine culturel et linguistique. Dans le cas d'un enfant inuit, métis ou de Premières Nations, la priorité doit être accordée à tout placement dans une famille inuite, métisse ou de Premières Nations, respectivement.

L'obligation qu'a chaque personne de déclarer ses soupçons quant au besoin de protection d'un enfant s'applique uniquement à l'égard d'un enfant de moins de 16 ans. Il est toutefois possible de déclarer le besoin de protéger un enfant de 16 ou 17 ans.

#### Partie VI - Justice pour les adolescents

Cette partie incorpore la partie IV de la loi actuelle avec les modifications indiquées ci-après.

La partie précise maintenant qu'une personne responsable d'un lieu de garde en milieu ouvert ou en milieu fermé ou d'un lieu de détention provisoire peut autoriser certains types de perquisition ou de fouille conformément aux règlements et prévoit que tout objet interdit trouve lors d'une perquisition ou d'une fouille peut être saisi et qu'il peut en être disposé conformément aux règlements.

La partie impose également des restrictions concernant l'utilisation de contenants mécaniques dans les lieux de garde en milieu fermé ou les lieux de détention provisoire en milieu fermé.

#### Partie VII - Mesures extraordinaires

Cette partie remplace la partie VI de la loi actuelle et apporte les modifications indiquées ci-après.

Un article est ajouté pour établir les restrictions concernant l'utilisation de contenants mécaniques dans les programmes de traitement en milieu fermé.

La loi actuelle permet qu'un enfant ou un adolescent soit placé dans une pièce d'isolement sous clé; sous le régime de la nouvelle loi, un enfant ou un adolescent peut être placé dans une pièce de désescalade sous clé.



doit donner un avis de l'arrêté aux employés concernés et à leurs agents négociateurs et aux autres personnes ou entités dont les contrats sont touchés par l'arrêté. Elle doit aussi mettre l'arrêté à la disposition du public.

Les règles permettant à un superviseur de programme d'entrer dans certains locaux et de les inspecter afin de s'assurer de la conformité à la Loi et aux règlements sont étendues. Cette partie énonce maintenant les règles applicables à de telles inspections avec ou sans mandat.

Les dispositions régissant les comités consultatifs sur les placements en établissement, qui figurent dans la partie II (Accès volontaire aux services) de la loi actuelle, se trouvent maintenant dans la présente partie de la nouvelle loi. Les modifications suivantes y sont apportées : la loi actuelle énumère les personnes devant faire partie de ces comités, alors que la nouvelle loi prévoit que les comités peuvent comprendre les personnes énumérées; la nouvelle loi exige que les comités présentent un rapport de leurs activités au ministre chaque année et à sa demande; le droit de s'opposer à un placement en établissement et de demander à la Commission de révision des services à l'enfance et à la famille de réviser la décision d'un comité relativement à un placement en établissement n'est plus limité aux enfants de 12 ans ou plus.

#### Partie IV - Services à l'enfance et à la famille - Premières Nations, Inuits et Métis

Cette partie remplace la partie X de la loi actuelle.

Sous le régime de la loi actuelle, le ministre peut désigner des communautés autochtones pour l'application de la Loi. En vertu de la partie IV de la nouvelle loi, le ministre peut, par règlement, dresser des listes de communautés inuites, métisses et de Premières Nations pour l'application de la Loi, avec le consentement des représentants de la communauté concernée.

Un autre changement concerne le pouvoir de désignation d'un organisme comme fournisseur de services aux familles et aux enfants indiens ou autochtones que confère la loi actuelle à une bande ou une communauté autochtone. La partie IV de la nouvelle loi prévoit qu'une bande ou une communauté inuite, métisse ou de Premières Nations peut désigner un organisme comme fournisseur de services aux familles et aux enfants inuits, métis ou de Premières Nations.

#### Partie V - Protection de l'enfance

Cette partie remplace la partie III de la loi actuelle et apporte les modifications énoncées ci-après.

Les modifications importantes sont apportées à la terminologie. Les termes «pupille de la société» et «pupille de la Couronne» ne sont plus employés. La nouvelle loi fait désormais mention d'enfants confiés aux soins d'une société de façon provisoire ou prolongée. De même, la nouvelle loi ne fait plus mention d'enfants abandonnés ou en fugue.

L'âge auquel un enfant peut avoir besoin de protection est étendu pour inclure les enfants de 16 ou 17 ans : les sociétés peuvent désormais appréhender et prendre en charge des enfants de 16 ou 17 ans. En vertu de la loi actuelle, un enfant peut être appréhendé et pris en charge par une société que jusqu'à son 16<sup>e</sup> anniversaire de naissance (toutefois, un enfant faisant l'objet d'une ordonnance de protection avant son 16<sup>e</sup> anniversaire de naissance peut continuer de recevoir des services de protection jusqu'à son 18<sup>e</sup> anniversaire de naissance). À ce titre, la définition d'enfant ayant besoin de protection dans la nouvelle loi précise maintenant qu'un enfant de 16 ou 17 ans a besoin de protection dans les circonstances ou situations prescrites par règlement. Le pouvoir de conclure des ententes avec des enfants de 16 ou 17 ans ayant besoin de protection est inclus dans cette partie.

L'âge auquel un enfant peut avoir besoin de protection est étendu pour inclure les adolescents de 16 et 17 ans. En vertu de la nouvelle loi, les adolescents de 16 et 17 ans peuvent être prescrites en vue de l'établissement du besoin de protection, supplémentaires qui ne s'appliquent qu'à eux peuvent être prescrites en vue de l'établissement du besoin de protection. Toutefois, les adolescents de 16 et 17 ans peuvent avoir besoin de protection et des circonstances ou conditions mention du point de vue et des désirs de l'enfant si ceux-ci peuvent être raisonnablement déterminés; la nouvelle loi fait mention de l'opinion et des désirs de l'enfant et précise qu'ils doivent être dûment pris en considération en regard à son âge et à son degré de maturité. La loi actuelle fait également mention de l'héritage culturel de l'enfant; la nouvelle loi fait plutôt mention de son patrimoine culturel et linguistique. La croyance religieuse dans laquelle l'enfant est élevé ne fait plus partie des circonstances prises en considération. La nouvelle loi prend toutefois en considération la race de l'enfant, son ascendance, son lieu d'origine, sa couleur, son origine ethnique, sa citoyenneté, la diversité de sa famille, son handicap, sa croyance, son sexe, son orientation sexuelle, son identité sexuelle et l'expression de son identité sexuelle. Dans la loi actuelle, l'intérêt véritable d'un enfant indien ou autochtone est établi en prenant en considération l'importance de maintenir l'identité culturelle de l'enfant. Cette disposition est élargie dans la nouvelle loi afin d'exiger que pour un enfant inuit, métis ou de Premières Nations, l'importance des liens qui unissent l'enfant à la communauté soit également prise en considération.

présenter des requêtes devant le tribunal.

Les circonstances à prendre en considération pour établir l'intérêt véritable de l'enfant ont changé. La loi actuelle fait mention du point de vue et des désirs de l'enfant si ceux-ci peuvent être raisonnablement déterminés; la nouvelle loi fait mention de l'opinion et des désirs de l'enfant et précise qu'ils doivent être dûment pris en considération en regard à son âge et à son degré de maturité. La loi actuelle fait également mention de l'héritage culturel de l'enfant; la nouvelle loi fait plutôt mention de son patrimoine culturel et linguistique. La croyance religieuse dans laquelle l'enfant est élevé ne fait plus partie des circonstances prises en considération. La nouvelle loi prend toutefois en considération la race de l'enfant, son ascendance, son lieu d'origine, sa couleur, son origine ethnique, sa citoyenneté, la diversité de sa famille, son handicap, sa croyance, son sexe, son orientation sexuelle, son identité sexuelle et l'expression de son identité sexuelle. Dans la loi actuelle, l'intérêt véritable d'un enfant indien ou autochtone est établi en prenant en considération l'importance de maintenir l'identité culturelle de l'enfant. Cette disposition est élargie dans la nouvelle loi afin d'exiger que pour un enfant inuit, métis ou de Premières Nations, l'importance des liens qui unissent l'enfant à la communauté soit également prise en considération.

Les circonstances à prendre en considération pour établir l'intérêt véritable de l'enfant ont changé. L'opinion et les désirs de l'enfant, en regard à son âge et à son degré de maturité, sauf s'ils ne peuvent être établis, et, dans le cas d'un enfant inuit, métis ou de Premières Nations, l'importance de préserver l'identité culturelle de l'enfant et les liens qui l'unissent à la communauté doivent être dûment pris en considération. Tout autre facteur jugé pertinent, notamment une liste de 11 facteurs semblables à ceux énumérés dans la loi actuelle, doit lui aussi être pris en compte. Les différences entre les deux lois sont les suivantes : la loi actuelle inclut l'héritage culturel de l'enfant dans la liste de facteurs, alors que la nouvelle loi mentionne le



Les autres objets de la Loi ne font plus précisément mention de la religion d'un enfant ou d'un adolescent. Toutefois, les croyances d'un enfant ou d'un adolescent font partie des facteurs à prendre en considération tout au long de la nouvelle loi.

## Partie II - Droits des enfants et des adolescents

Cette partie regroupe les droits des enfants et des adolescents énumérés à l'article 2 et aux parties I et V de la loi actuelle.

Une nouvelle disposition interdit aux fournisseurs de services et aux parents de famille d'accueil d'utiliser des contentions mécaniques sur des enfants et des adolescents, sauf dans les cas particuliers suivants :

De nouvelles dispositions sont ajoutées pour prévoir ce qui suit : restreindre, d'une part, l'utilisation, par les fournisseurs de services et les parents de famille d'accueil, de contentions physiques sur les enfants et les adolescents, sauf dans les cas autorisés par les règlements et, d'autre part, l'utilisation de contentions mécaniques sur les enfants et les adolescents, sauf dans les cas permis par les parties VI (Justice pour les adolescents) et VII (Mesures extraordinaires) et les règlements. La nouvelle loi conserve la disposition de la loi actuelle interdisant aux fournisseurs de services de détenir un enfant dans des locaux fermés à clé, sauf dans les cas autorisés par les parties VI (Justice pour les adolescents) et VII (Mesures extraordinaires) de cette loi. Désormais, cette disposition s'applique expressément aux parents de famille d'accueil ainsi qu'aux fournisseurs de services et tant à l'égard des adolescents qu'à l'égard des enfants.

Par ailleurs, une nouvelle déclaration des droits des enfants et des adolescents est ajoutée au début de la partie. Elle comprend le droit, pour un enfant ou un adolescent, d'exprimer son opinion librement et sans risque, le droit, pour un enfant ou un adolescent, d'exprimer dans le cadre d'un dialogue honnête et respectueux, le droit d'obtenir que son opinion soit dûment prise en considération eu égard à son âge et à son degré de maturité, et le droit d'être informé, dans un langage adapté à son niveau de compréhension, de ses droits, ainsi que de l'existence et du rôle de l'intervenant provincial en faveur des enfants et des jeunes et de la manière de le contacter. Le protocole de la loi actuelle en ce qui a trait à la présentation de plaintes concernant les fournisseurs de services relatives aux prétendues violations des droits des enfants s'applique aussi sous le régime de la nouvelle loi aux plaintes relatives aux restrictions ou aux conditions imposées aux visiteurs et aux visites. Un enfant ou une autre personne peut présenter une plainte en tant que particulier ou en tant que membre d'un groupe.

Partie III - Financement et responsabilisation

Cette partie remplace la partie I de la loi actuelle. Les ajouts qui sont faits figurent ci-après.

Le ministre peut désigner des entités comme organismes responsables, lesquels doivent exercer les fonctions que les règlements attribuent à leur catégorie d'organismes responsables. Le ministre peut donner à certains fournisseurs de services et organismes responsables des directives à caractère contraignant. Le superviseur de programme peut donner à certains fournisseurs de services et organismes responsables des ordres de conformité en cas de non-conformité, notamment à la Loi, aux règlements ou aux directives.

Les fonctions des sociétés d'aide à l'enfance sont énoncées dans cette partie et demeurent essentiellement les mêmes. Une nouveauté réside dans le fait que les sociétés sont désormais tenues d'enquêter sur les allégations selon lesquelles un enfant a besoin de protection et de protéger les enfants qui leur sont confiés. Cette obligation vise tous les enfants jusqu'à leur 18<sup>e</sup> anniversaire de naissance alors que, dans la loi actuelle, elle se limite aux enfants de moins de 16 ans et à ceux de 16 ou 17 ans qui font l'objet d'une ordonnance de protection.

Cette partie comprend maintenant une exigence selon laquelle la réception de fonds est subordonnée à la conclusion par chaque société d'une entente de responsabilisation avec le ministre. Cette exigence, qui se trouve actuellement dans les règlements pris en vertu de la Loi, devient une exigence légale dans la nouvelle loi. Le ministre peut donner aux sociétés des directives à caractère contraignant. Un directeur peut leur donner des ordres de conformité en cas de non-conformité, notamment à la Loi, aux règlements, à une entente de responsabilisation ou aux directives.

Si une société ne se conforme pas à un ordre de conformité, ou si le ministre est d'avis qu'il est dans l'intérêt public de le faire, le ministre peut donner divers arrêtés. Il peut notamment ordonner que la société prenne des mesures correctives, suspendre, modifier ou révoquer la désignation de la société, nommer ou remplacer des membres du conseil d'administration de la société, désigner ou remplacer un président du conseil, ou nommer un superviseur chargé d'administrer et de gérer la société. À moins que certaines conditions ne soient réunies, le ministre doit aviser la société de son intention de donner un tel arrêté et la société a le droit de présenter des observations écrites.

Cette partie énonce des règles lorsque deux sociétés ou plus se proposent de fusionner et d'être prorogées en une seule et même société. Le ministre peut, par arrêté, ordonner qu'une société fusionne avec une ou plusieurs autres sociétés ou procède à d'autres types de restructuration, s'il est d'avis qu'il est dans l'intérêt public de le faire. Le ministre doit aviser la société de son intention de donner un tel arrêté et la société a le droit de présenter des observations écrites portant sur les directives figurant dans l'arrêté, mais pas sur l'obligation de fusionner. Dans certaines circonstances, le ministre peut aussi nommer un superviseur chargé de mettre en application ou de faciliter la mise en application d'un tel arrêté. La société qui reçoit un avis d'une proposition d'arrêté visant une fusion ou une restructuration d'une autre façon doit en donner une copie aux employés concernés et à leurs agents négociateurs. À la réception de l'arrêté définitif visant la fusion ou la restructuration, la société



La présente réimpression du projet de loi comporte des symboles qui indiquent les modifications apportées en comité. Le nouveau texte est souligné et le texte supprimé est rayé.

## NOTE EXPLICATIVE

Le projet de loi est divisé en quatre annexes.

L'annexe 1 abroge la *Loi sur les services à l'enfance et à la famille* et édite, à sa place, la *Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille*.

L'annexe 2 modifie la *Loi sur les services à l'enfance et à la famille* pour le laps de temps où elle demeure en vigueur, à savoir jusqu'à la date de son abrogation par l'annexe 1.

L'annexe 3 modifie la nouvelle loi, c'est-à-dire la *Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille*. L'annexe 4 renferme des modifications connexes et autres apportées à 36 autres lois.

## ANNEXE 1 LOI DE 2017 SUR LES SERVICES À L'ENFANCE, À LA JEUNESSE ET À LA FAMILLE

La loi actuelle fait mention des enfants indiens et autochtones et accorde certains droits d'avis et de participation à un représentant choisi par la bande ou la communauté autochtone à laquelle un enfant appartient. La nouvelle loi fait mention des enfants et adolescents inuits, métis et de Premières Nations et accorde des droits d'avis et de participation à un représentant choisi par chacune des bandes et communautés inuites, métisses ou de Premières Nations auxquelles un enfant ou un adolescent appartient. La mention dans la nouvelle loi de bandes et de communautés inuites, métisses ou de Premières Nations auxquelles un enfant ou un adolescent appartient inclut toute bande dont l'enfant ou l'adolescent est membre, toute bande avec laquelle l'enfant ou l'adolescent s'identifie, toute communauté inuite, métisse ou de Premières Nations dans un règlement et dont l'enfant ou l'adolescent est membre, et toute communauté inuite, métisse ou de Premières Nations qui est énumérée dans un règlement et avec laquelle l'enfant ou l'adolescent s'identifie.

Des modifications importantes sont apportées à la terminologie. Les termes «pupille de la société» et «pupille de la Couronne» ne sont plus employés. La nouvelle loi fait désormais mention d'enfants confiés aux soins d'une société de façon provisoire ou prolongée, respectivement, mais elle ne fait plus mention d'enfants abandonnés ou en fugue. Enfin, la nouvelle loi évoque le fait, d'une part, d'amener des enfants dans un lieu sûr au lieu de les appréhender et, d'autre part, de traiter de questions au lieu de traiter d'enfants.

Tout comme la *Loi sur les services à l'enfance et à la famille*, la *Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille* est divisée en parties. Voici une explication de chaque partie et, en particulier, des différences par rapport à la loi actuelle.

Partie I - Objets et interprétation

L'objet primordial de la Loi, à savoir promouvoir l'intérêt véritable de l'enfant, sa protection et son bien-être, demeure le même que celui de la loi actuelle.

Les autres objets de la Loi sont élargis afin d'inclure ce qui suit :

Reconnaître que les services fournis aux enfants et aux adolescents devraient l'être d'une manière qui respecte les différences régionales, dans la mesure du possible, et tiennent compte :

des besoins des enfants et des adolescents sur les plans physique, affectif, spirituel et mental et sur le plan du développement ainsi que des différences qui existent entre eux;

de la race de l'enfant ou de l'adolescent, de son ascendance, de son lieu d'origine, de sa couleur, de son origine ethnique, de sa citoyenneté, de la diversité de sa famille, de son handicap, de sa croyance, de son sexe, de son orientation sexuelle, de son identité sexuelle et de l'expression de son identité sexuelle;

des besoins de l'enfant ou de l'adolescent sur les plans culturel et linguistique.

Reconnaître que, dans la mesure du possible, les services fournis aux enfants et aux adolescents et à leur famille devraient l'être d'une manière qui tire parti des forces de la famille, dans la mesure du possible.

L'un des autres objets de la loi actuelle consiste à reconnaître que les services fournis aux familles et aux enfants indiens et autochtones devraient l'être d'une manière qui tienne compte de leur culture, de leur patrimoine, de leurs traditions et du concept de la famille élargie. Cet objet est modifié pour viser les enfants, les adolescents et les familles inuits, métis et de Premières Nations ainsi que leur culture, leur patrimoine et leurs traditions. De plus, il est élargi afin de reconnaître également les liens qui unissent ces enfants, ces adolescents et ces familles à leurs communautés.







## Projet de loi 89

**Loi édictant la Loi de 2017 sur les services à l'enfance, à la jeunesse et à la famille,  
modifiant et abrogeant la Loi sur les services à l'enfance et à la famille  
et apportant des modifications connexes à d'autres lois**

**L'honorable M. Coteau**  
Ministre des Services à l'enfance et à la jeunesse

**Projet de loi du gouvernement**

1 <sup>re</sup> lecture	8 décembre 2016
2 <sup>e</sup> lecture	9 mars 2017
3 <sup>e</sup> lecture	
Sanction royale	

*(Réimprimé tel qu'il a été modifié par le Comité permanent de la justice  
et rapporté à l'Assemblée législative le 15 mai 2017)*

*(Les dispositions du présent projet de loi seront renumérotées après la 3<sup>e</sup> lecture)*



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